

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

January 10, 2008

Upon Conclusion of the MUA Committee Meeting

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**PUBLIC SESSION****Call to Order**

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

Board Member Opening Remarks**Election of Officers for 2008****Candidate Statements**

- Chair
- Vice Chair
- Secretary

New Chair's Opening Remarks**Approval of Minutes**

November 27, 2007, Open Session

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws**Executive Officer's Report**

- Budget
- Licensing
- Enforcement

Committee Reports**Discussion and Possible Action:**

- Manipulation Under Anesthesia (MUA) Committee (The Board may take action on any agenda item listed on the attached MUA Committee Agenda)

Discussion and Possible Action:

- Enforcement Committee (The Board may take action on any agenda item listed on the attached Enforcement Committee Agenda)

Discussion and Possible Action:

- Legislative Committee
- Assembly Bill 163
- Any other legislative bills of interest

Announcements

Next Board meeting – March 27, 2008, Sacramento

Public Comment**New Business**

- Future Agenda Items
- Other Issues

CLOSED SESSION**Discussion on Pending Litigation**

Pursuant to California Government Code Section 11126(e)

Bryan Meredith, D.C. v. M. Maggie Craw, D.C. et al.
Sacramento County Superior Court, Case No. 07AS03639

David Hinchey v. Board of Chiropractic Examiners, Catherine Hayes
Sacramento County Superior Court, Case No. 07AS03721

PUBLIC SESSION**Call to Order****Adjournment**

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES**

November 27, 2007
400 R Street, Room 101
Sacramento, CA 95814

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Executive Director
LaVonne Powell, DCA Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Tyler called the meeting to order at 10:07

Roll Call

Dr. Columbu called the roll. All members were present.

Approval of Minutes

- August 16, 2007, Open Session

Dr. Tyler asked for a motion to approve the October 25, 2007.

**DR. LERNER MOVED TO ADOPT THE OCTOBER 25, 2007, OPEN SESSION MINUTES.
DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.**

Executive Officer's Report

Administration

Budget Update

Mr. Stiger reported that the Board has expended approximately \$546,000 through October 31, 2007, which is about 35% of our total budget. This does not include the projected \$370,000 in legal fees needed to defend the Board in two lawsuits. Board staff is working closely with the Department of Finance to address the Board's fiscal issues and have every intention of keeping the office functioning through the end of the fiscal year. The effective date of the lay-off is January 7, 2008, when staffing will be reduced to six. The consequence of the budget cut is most noticeable in our Enforcement Unit. The Board is unable to initiate a number of enforcement cases due to limited funds.

Judge Duvaras made a recommendation that licensed Chiropractors with ten years of experience and clean record offer their services on a pro bono basis to assist Board staff review consumer complaints. Mr. Stiger suggested that these chiropractors might be used instead as expert reviewers and keep professional staff evaluating consumer complaints.

Mr. Conran expressed his concern about deputizing members of the profession to do work on behalf of the state and suggested that the Board move cautiously. Mr. Conran also suggested that the Chair and the Executive Officer meet with Senator Mark Ridley-Thomas to resolve the budget issue. Mr. Conran stated it is incumbent upon the Board to reach out to the Legislature to address our budget. Dr. Lerner agreed with Mr. Conran's suggestion and informed the Board he has contacted the offices of Assembly Members Laird and Eng but has not been successful in making contact.

Mr. Stiger provided licensing and examination statistics and indicated that licensing processing time will increase in January due to staffing reductions. Dr. Lerner asked how licensees and applicants would be affected. Mr. Stiger projected that processing times would probably take up to 45 days or longer.

Dr. Lerner asked what licensees should do if they submit their renewals in two weeks before the expiration date and they don't receive their new licenses. Should licensees continue to display the old license? Mr. Stiger suggested that licensees continue to display their licenses and encouraged all licensees to renew early to avoid potential delays.

Mr. Conran asked if the Board is working on capturing e-mail addresses of licensees to communicate more efficiently and rapidly. Mr. Stiger said Board staff attempted to achieve this through a subscription on the Board's website but it went down during the transition to our new web site.

Mr. Conran asked that the Board be updated at the next meeting on final personnel changes and how operations would be continued with a reduced staff.

Mr. Stiger provided enforcement statistics and noted that in comparison to last year the number of violations have decreased.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell asked the Board Members if they had any questions or topics that they would like to discuss. Mr. Conran applauded the Chair for continuing to have this topic on the agenda and hopes that the new Chair does the same.

Federation of Chiropractic Licensing Boards (FCLB) District Meeting Delegate Report

Dr. Lubkin briefly summarized his experiences in attending these meetings and the value of the Federation of Chiropractic Licensing Boards and the National Board of Chiropractic Examiners in assisting this Board meets its mission. Dr. Lubkin introduced Dr. Edward Weathersby, D.C., Dr. Martin Kollasch, D.C. and Mr. Horace Elliott, who provided an overview of their organizations and services that they provide to regulatory boards.

Committee Reports

Continuing Education

Dr. Lubkin reported that the committee needs to review and update the current regulations to increase CE hours, address distance learning, and CE providers. The committee intends to meet early next year to begin working on the regulations.

Enforcement Committee

Dr. Lubkin reported that the board needs to move forward with 306.1 or rewrite the regulation, or abolish the regulation. Dr. Lubkin reported that the issue of chiropractors conducting x-rays needs to be further researched before the committee could come forward with a recommendation to the full board.

Dr. Tyler expressed his concern that the committee was not moving quickly enough with 306.1. Dr. Lubkin stated he will provide a written report at the next meeting on the status.

Ms. Powell, expressed her concern with the Board moving forward with establishing Quality Review Panels from a legal perspective and public policy perspective. Ms. Powell is concerned that this would set this Board far apart from all other healing arts boards.

Dr. Tyler added that the Board needs a strong Chiropractic input regarding complaint review and that the Board worked well for 70 years prior to the establishment of a chiropractic consultant.

Mr. Conran agreed with Ms. Powell. He said that every other Board moved away from this because Boards got themselves in trouble because of the actions of other people and this would be contrary to every other healing arts board in the state.

Dr. Tyler asked Dr. Charles Davis, D.C. as it was done before, is there anything about this program that is unfeasible or could open up the Board to legal problems. Dr. Davis said he recognizes potential for problems as staff counsel stated. Dr. Davis says that the Board needs to establish a process of instruction and standards for review panels, consultants or experts.

Dr. Lerner offered that most of the Board members would oppose the hiring of a Chiropractic Consultant due to the recent past. Dr. Lerner states that the Board has a duty to implement regulations and the

Board needs to make a decision.

Mr. Stiger stated that the Board has only considered two options either the Chiropractic Consultant or 306.1 and that other options need to be considered. Mr. Stiger stated if a decision needs to be made today, from a staff's perspective, 306.1 should be repealed.

Dr. Lubkin agreed with Mr. Stiger in that the Board has not considered all available alternatives and that 306.1 needs to be rewritten at a minimum. Dr. Lubkin requested time to work with staff counsel and the Executive Officer to prepare a report on the status of 306.1.

Dr. Tyler asked Dr. Lubkin to meet with Ms. Powell, Dr. Davis and other interested parties to reach some consensus.

Dr. Davis raised several concerns about the Board's current Expert Reviewers including conflicts of interest.

Ms. Powell suggested that she work with Mr. Stiger to develop an Expert Reviewer manual to present to the Board at the next Board meeting. Mr. Stiger agreed to share the manual with Dr. Davis and other interested parties.

Dr. Tyler clarified the Board's priorities in that Board staff will proceed with the enforcement issues prior to addressing the chiropractic x-ray issue due to staffing issues. Ms. Powell added that chiropractors should not presume that the Board can make a pronouncement regarding scope of practice and the next day chiropractors go back to Health Services. The Board may need to change regulations or consider other options before this issue completely resolved.

MUA Committee

Dr. Lerner reported that Dr. David Prescott made a presentation on the original scope of practice approved by the voters in 1922. Dr. Lerner complimented Mr. Prescott on his presentation and that the committee will continue to research scope of practice.

Dr. Lerner stated that when the committee moves forward with regulations, the committee will develop a standard of care that will relate to defining how the procedure will be performed, what facility, who is in charge, and any emergency procedures. Also, the committee is waiting for a legal opinion from DCA.

Mr. Conran stated that he was pleased to hear that the committee is developing standards about how and where MUA is performed. Mr. Conran stated his preference is that MUA be performed at hospitals.

Proposed Board Meeting Schedule for 2008

Judge Duvaras proposed that the two day meetings be changed to one day for cost savings and for the convenience of the professional members. Mr. Stiger explained that adding additional meetings increase cost and the meetings could start later in the day to save costs.

MR. CONRAN MOVED TO ADOPT THE PROPOSED BOARD MEETING SCHEDULE FOR 2008. DR. LEARNER SECONDED THE MOTION. VOTE: 4-1. MOTION CARRIED.

Announcements

The next meeting is scheduled for January 10, 2008, in Sacramento.

Public Comment

Dr. Charles Davis, D.C. congratulated the Board and staff for its work this year

Mr. Dean Falltrick stated that he wants to see the Board focus on the ability to expand continuing education in a distance learning format.

Kristine Schultz, Chiropractic California Association thanked the Board for all of its efforts.

Debra Mattos, Southern California University of Health Sciences says the Board made a tremendous improvement and thanked the Board.

Dr. Lerner thanked Mr. Stiger and the Board staff for their efforts.

Future Agenda Items

Judge Duvaras asked that a discussion on available legal remedies to restore the Board's budget.

Dr. Tyler adjourned the public session at 12:43pm.

DRAFT

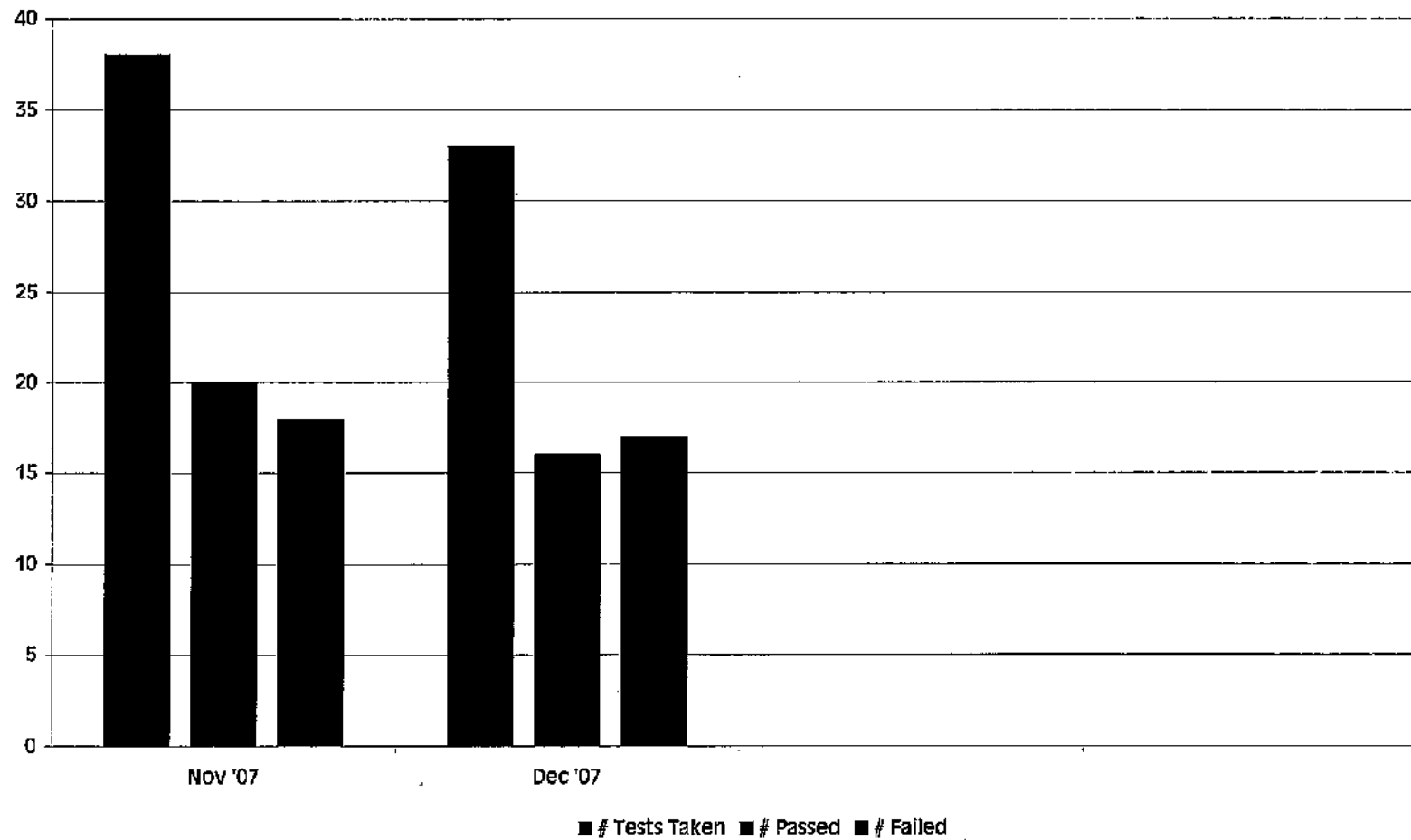
Budget

will be sent prior to the Board
meeting via email

2007 Chiropractic Law & Professional Practice Exam (CLPPE)

	# Tests Taken	# Passed	# Failed
Nov '07	38	20	18
Dec '07	33	16	17

*78% Needed to Pass the CLPPE



**BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA
As of DECEMBER 31, 2007**

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13822	1006	7809
SATELLITES	2262	798	4710
CORPORATIONS	1331	312	976
REFFERALS	17	15	4
TOTALS	17432	2131	13499

As of DECEMBER 31, 2006

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13748	1321	7232
SATELLITES	2013	1291	3457
CORPORATIONS	1220	268	957
REFFERALS	17	14	4
TOTALS	16998	2894	11650

Violation Codes/Descriptions

The Chiropractic Initiative Act of California (ACT):

- 10 – Rules of Professional Conduct
- 15 – Noncompliance With and Violations of Act

California Code of Regulations (CCR):

- 302(a) – Scope of Practice
- 303 – Filing of Addresses
- 308 – Display of License
- 311 – Advertisements
- 312 – Illegal Practice
- 316 – Responsibility for Conduct on Premises
- 317 – Unprofessional Conduct
- 318 – Chiropractic Patient Records/Accountable Billing
- 319 – Free or Discount Services
- 355 – Renewal and Restoration
- 360 – Continuing Education Audits
- 367.5 – Application, Review of Refusal to Approve (corporations)
- 367.7 – Name of Corporation

Business and Professions Code (BP):

- 801 – Professional Reporting (malpractice settlements)
- 810 – Insurance Fraud
- 2430 – Default on Health Education Assistance Loan

Health and Safety Code (HS):

- 123110 – Patient Access to Health Records

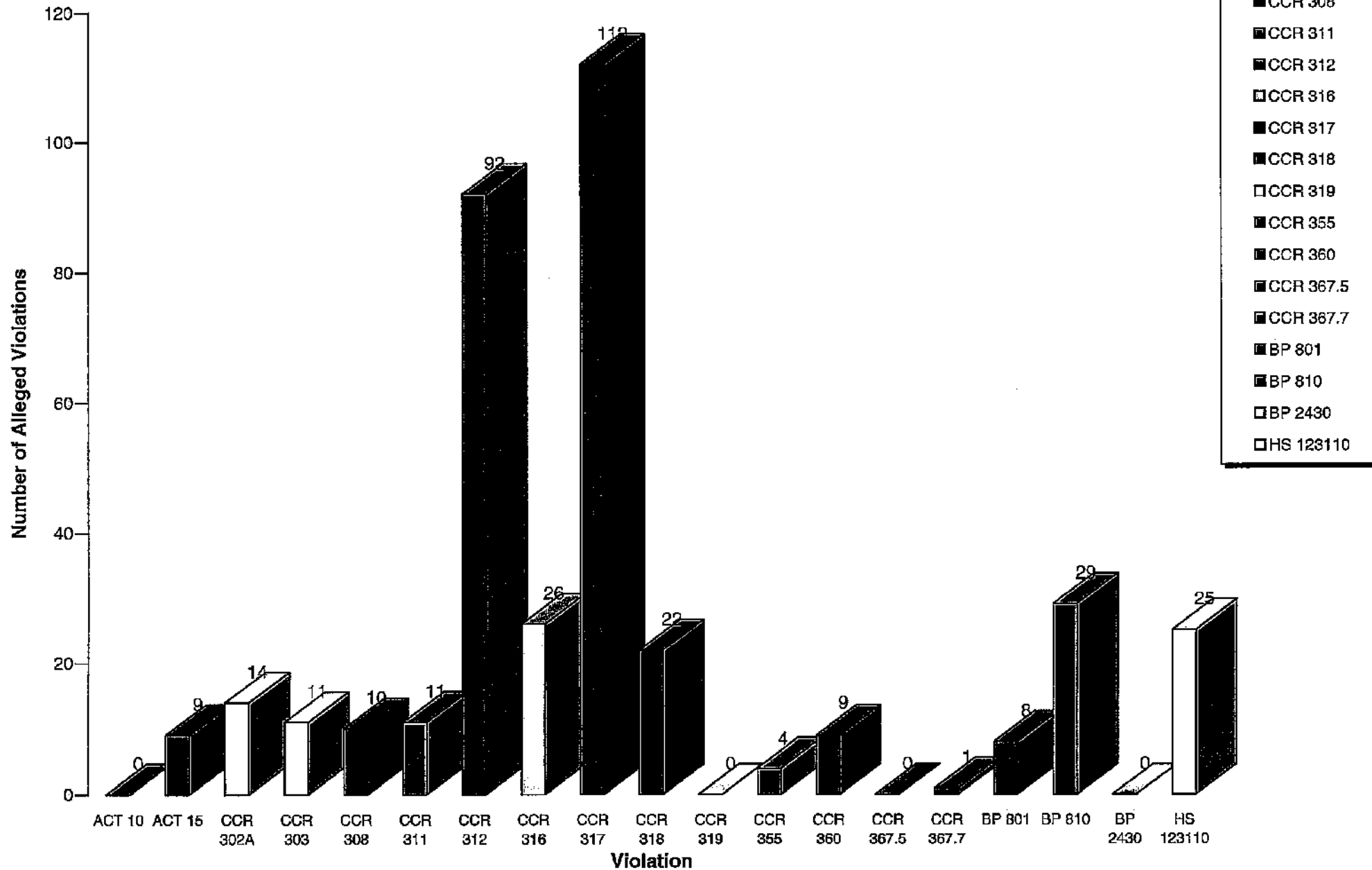
FISCAL YEAR 2008

July 1, 2007 - December 31, 2007

Total Number of Complaints Opened - 312

Total Number of Violations - 383

(A complaint may contain multiple violations)



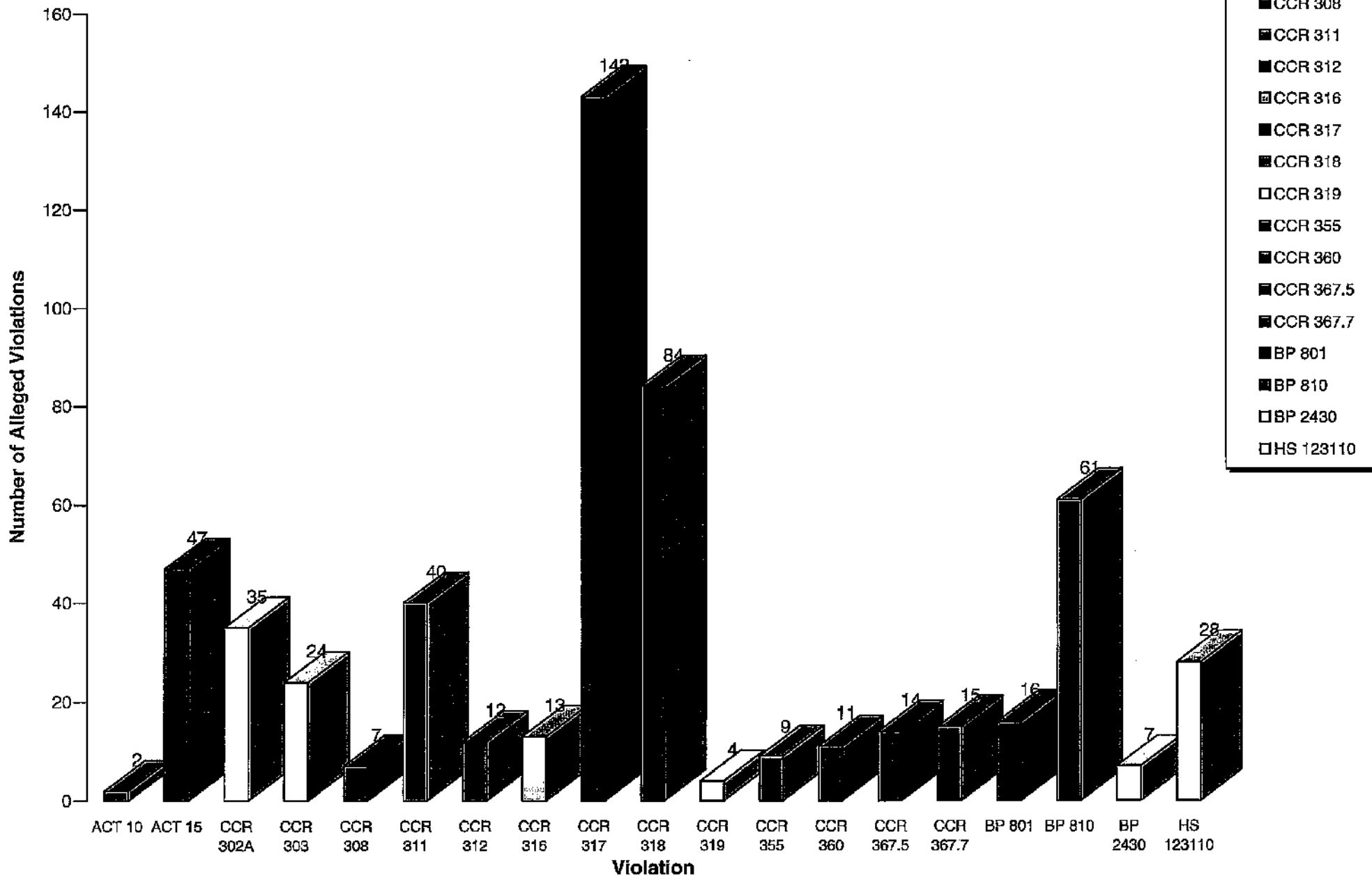
FISCAL YEAR 2007

July 1, 2006 - December 31, 2006

Total Number of Complaints Opened - 383

Total Number of Violations - 572

(A complaint may contain multiple violations)



AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 163

Introduced by Assembly Member Mendoza Eng
(Coauthor: Senator Ridley-Thomas)

January 22, 2007

~~An act to add Article 3.5 (commencing with Section 14691) to Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code, relating to state buildings. An act to amend Sections 101 and 313.1 of the Business and Professions Code, and to amend an initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation thereof, and repealing all acts and parts of acts inconsistent therewith" approved by electors November 7, 1922, by amending Sections 1, 2, 3, 4, 6, 8, and 14 thereof and adding Sections 1.5, 6.5, and 18.5 thereto, relating to chiropractors, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, ~~Mendoza Eng. State buildings: bicycle facilities. Chiropractors.~~

(1) Existing law, the Chiropractic Act enacted by initiative, provides for the licensing and regulation of chiropractors by the State Board of Chiropractic Examiners, which is composed of 7 members appointed by the Governor. Under the act, the board is required to employ an

executive officer. Existing law establishes the Department of Consumer Affairs in the State and Consumer Services Agency, and the department is composed of various boards that regulate members of professions, including the healing arts, and vocations. Existing law prohibits a person from being denied admission to a chiropractic school, from being denied the right to take an examination, from being denied the right to receive a diploma or certificate of graduation from a chiropractic school, or from being denied licensure on the basis that he or she is blind.

This bill would enact the Chiropractor Consumer Protection Act, which would include the board in the Department of Consumer Affairs, would change 2 members of the board to public members appointed by the Senate Committee on Rules and the Speaker of the Assembly, and would require the members appointed by the Governor, including one public member, to be confirmed by the Senate. The bill would also prohibit the director from disapproving or rejecting any rule or regulation pertaining to chiropractic scope of practice or educational requirements. The bill would exempt the executive officer from civil service, and would specify that other employees of the board are subject to those provisions. The bill would also specify that protection of the public is the highest priority of the board. The bill would provide that the employment of legal counsel by the board be subject to certain requirements, and that the board be subject to specified meeting and disclosure requirements. The bill would also require that all appropriations from the State Board of Chiropractic Examiners' Fund be made by the Legislature in the annual Budget Act. This bill would prohibit a person from being denied admission to a chiropractic school, from being denied the right to take an examination, from being denied the right to receive a diploma or certificate of graduation from a chiropractic school, or from being denied licensure because he or she is disabled. The bill would also specify that certain general provisions applicable to health care providers and health care provider licensing boards be applicable to chiropractors and to the board. The bill would appropriate \$1,542,000 from the State Board of Chiropractic Examiners' Fund for purposes of the Chiropractic Act, as specified.

Because the bill would amend an initiative act, the bill would require certain of its provisions be submitted to the voters for approval on the June 3, 2008, primary election ballot. The bill would state the Legislature's intent to appropriate \$300,000 from the State Board of

Chiropractic Examiners' Fund for specified costs incurred by the Secretary of State in placing these provisions on the ballot.

(2) This bill would incorporate additional changes in Section 101 of the Business and Professions Code, proposed by SB 534, to be operative only if both this bill and SB 534 are chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

~~Existing law generally sets forth the centralized services to be provided by the Department of General Services with respect to state buildings and property, among other duties.~~

~~This bill would enact the Green and Healthy Workplace Bicycle Facilities Act of 2007, which would require the department, in consultation with the State Architect and other state agencies, to adopt regulations establishing standards for bicycle facilities, including parking areas, showers, and lockers in state-owned and state-leased buildings. The bill would require each state agency to develop programs to promote and encourage bicycle commuting and use of bicycles for work-related trips, as well as to manage its bicycle facilities.~~

Vote: majority. Appropriation: no-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. This act shall be known and may be cited as the*
- 2 *Chiropractor Consumer Protection Act.*
- 3 *SEC. 2. Section 101 of the Business and Professions Code is*
- 4 *amended to read:*
- 5 101. The department is comprised of:
- 6 (a) The Dental Board of California.
- 7 (b) The Medical Board of California.
- 8 (c) The State Board of Optometry.
- 9 (d) The California State Board of Pharmacy.
- 10 (e) The Veterinary Medical Board.
- 11 (f) The California Board of Accountancy.
- 12 (g) The California Architects Board.
- 13 (h) The Bureau of Barbering and Cosmetology.
- 14 (i) The Board for Professional Engineers and Land Surveyors.
- 15 (j) The Contractors' State License Board.
- 16 (k) The Bureau for Private Postsecondary and Vocational
- 17 Education.
- 18 (l) The Structural Pest Control Board.

- 1 (m) The Bureau of Home Furnishings and Thermal Insulation.
- 2 (n) The Board of Registered Nursing.
- 3 (o) The Board of Behavioral Sciences.
- 4 (p) The State Athletic Commission.
- 5 (q) The Cemetery and Funeral Bureau.
- 6 (r) The State Board of Guide Dogs for the Blind.
- 7 (s) The Bureau of Security and Investigative Services.
- 8 (t) The Court Reporters Board of California.
- 9 (u) The Board of Vocational Nursing and Psychiatric
- 10 Technicians.
- 11 (v) The Landscape Architects Technical Committee.
- 12 (w) The Bureau of Electronic and Appliance Repair.
- 13 (x) The Division of Investigation.
- 14 (y) The Bureau of Automotive Repair.
- 15 (z) The State Board of Registration for Geologists and
- 16 Geophysicists.
- 17 (aa) The Respiratory Care Board of California.
- 18 (ab) The Acupuncture Board.
- 19 (ac) The Board of Psychology.
- 20 (ad) The California Board of Podiatric Medicine.
- 21 (ae) The Physical Therapy Board of California.
- 22 (af) The Arbitration Review Program.
- 23 (ag) The Committee on Dental Auxiliaries.
- 24 (ah) The Hearing Aid Dispensers Bureau.
- 25 (ai) The Physician Assistant Committee.
- 26 (aj) The Speech-Language Pathology and Audiology Board.
- 27 (ak) The California Board of Occupational Therapy.
- 28 (al) The Osteopathic Medical Board of California.
- 29 (am) The Bureau of Naturopathic Medicine.
- 30 (an) *The State Board of Chiropractic Examiners. This*
- 31 *subdivision shall be operative only if the amendments to the*
- 32 *Chiropractic Act proposed by Assembly Bill 163 of the 2007-08*
- 33 *Regular Session are approved by the voters at the June 3, 2008,*
- 34 *primary election and become effective on that date.*
- 35 (~~an~~)
- 36 (ao) Any other boards, offices, or officers subject to its
- 37 jurisdiction by law.
- 38 SEC. 2.5. *Section 101 of the Business and Professions Code*
- 39 *is amended to read:*
- 40 101. The department is comprised of:

- 1 (a) The Dental Board of California.
- 2 (b) The Medical Board of California.
- 3 (c) The State Board of Optometry.
- 4 (d) The California State Board of Pharmacy.
- 5 (e) The Veterinary Medical Board.
- 6 (f) The California Board of Accountancy.
- 7 (g) The California Architects Board.
- 8 (h) The Bureau of Barbering and Cosmetology.
- 9 (i) The Board for Professional Engineers and Land Surveyors.
- 10 (j) The Contractors' State License Board.
- 11 (k) The Bureau for Private Postsecondary and Vocational
- 12 Education.
- 13 (l) The Structural Pest Control Board.
- 14 (m) The Bureau of Home Furnishings and Thermal Insulation.
- 15 (n) The Board of Registered Nursing.
- 16 (o) The Board of Behavioral Sciences.
- 17 (p) The State Athletic Commission.
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- 19 (r) The State Board of Guide Dogs for the Blind.
- 20 (s) The Bureau of Security and Investigative Services.
- 21 (t) The Court Reporters Board of California.
- 22 (u) The Board of Vocational Nursing and Psychiatric
- 23 Technicians.
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- 26 (x) The Division of Investigation.
- 27 (y) The Bureau of Automotive Repair.
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- 29 Geophysicists.
- 30 (aa) The Respiratory Care Board of California.
- 31 (ab) The Acupuncture Board.
- 32 (ac) The Board of Psychology.
- 33 (ad) The California Board of Podiatric Medicine.
- 34 (ae) The Physical Therapy Board of California.
- 35 (af) The Arbitration Review Program.
- 36 (ag) ~~The Committee on Dental Auxiliaries~~ *Dental Hygiene*
- 37 *Committee of California.*
- 38 (ah) The Hearing Aid Dispensers Bureau.
- 39 (ai) The Physician Assistant Committee.
- 40 (aj) The Speech-Language Pathology and Audiology Board.

1 (ak) The California Board of Occupational Therapy.

2 (al) The Osteopathic Medical Board of California.

3 (am) The Bureau of Naturopathic Medicine.

4 (an) *The State Board of Chiropractic Examiners. This*
5 *subdivision shall be operative only if the amendments to the*
6 *Chiropractic Act proposed by Assembly Bill 163 of the 2007-08*
7 *Regular Session are approved by the voters at the June 3, 2008,*
8 *primary election and become effective on that date.*

9 (an)

10 (ao) Any other boards, offices, or officers subject to its
11 jurisdiction by law.

12 SEC. 3. *Section 313.1 of the Business and Professions Code*
13 *is amended to read:*

14 313.1. (a) Notwithstanding any other provision of law to the
15 contrary, no rule or regulation, except those relating to
16 examinations and qualifications for licensure, and no fee change
17 proposed or promulgated by any of the boards, commissions, or
18 committees within the department, shall take effect pending
19 compliance with this section.

20 (b) The director shall be formally notified of and shall be
21 provided a full opportunity to review, in accordance with the
22 requirements of Article 5 (commencing with Section 11346) of
23 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
24 Code, and this section, all of the following:

25 (1) All notices of proposed action, any modifications and
26 supplements thereto, and the text of proposed regulations.

27 (2) Any notices of sufficiently related changes to regulations
28 previously noticed to the public, and the text of proposed
29 regulations showing modifications to the text.

30 (3) Final rulemaking records.

31 (c) The submission of all notices and final rulemaking records
32 to the director and the completion of the director's review, as
33 authorized by this section, shall be a precondition to the filing of
34 any rule or regulation with the Office of Administrative Law. The
35 Office of Administrative Law shall have no jurisdiction to review
36 a rule or regulation subject to this section until after the completion
37 of the director's review and only then if the director has not
38 disapproved it. The filing of any document with the Office of
39 Administrative Law shall be accompanied by a certification that

1 the board, commission, or committee has complied with the
2 requirements of this section.

3 (d) Following the receipt of any final rulemaking record subject
4 to subdivision (a), the director shall have the authority for a period
5 of 30 days to disapprove a proposed rule or regulation on the
6 ground that it is injurious to the public health, safety, or welfare.

7 (e) Final rulemaking records shall be filed with the director
8 within the one-year notice period specified in Section 11346.4 of
9 the Government Code. If necessary for compliance with this
10 section, the one-year notice period may be extended, as specified
11 by this subdivision.

12 (1) In the event that the one-year notice period lapses during
13 the director's 30-day review period, or within 60 days following
14 the notice of the director's disapproval, it may be extended for a
15 maximum of 90 days.

16 (2) If the director approves the final rulemaking record or
17 declines to take action on it within 30 days, the board, commission,
18 or committee shall have five days from the receipt of the record
19 from the director within which to file it with the Office of
20 Administrative Law.

21 (3) If the director disapproves a rule or regulation, it shall have
22 no force or effect unless, within 60 days of the notice of
23 disapproval, (A) the disapproval is overridden by a unanimous
24 vote of the members of the board, commission, or committee, and
25 (B) the board, commission, or committee files the final rulemaking
26 record with the Office of Administrative Law in compliance with
27 this section and the procedures required by Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code.

30 (f) Nothing in this section shall be construed to prohibit the
31 director from affirmatively approving a proposed rule, regulation,
32 or fee change at any time within the 30-day period after it has been
33 submitted to him or her, in which event it shall become effective
34 upon compliance with this section and the procedures required by
35 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
36 3 of Title 2 of the Government Code.

37 (g) *The director shall not have the authority pursuant to this*
38 *section to disapprove, and subdivision (d) shall not apply to, any*
39 *rule or regulation pertaining to the legal scope of professional*
40 *practice for doctors of chiropractic as specified and permitted*

1 pursuant to Section 7 of the Chiropractic Act, or any rule or
2 regulation pertaining to the current minimum educational
3 requirements as specified in Section 5 of the Chiropractic Act.

4 SEC. 4. Section 1 of the act cited in the title is amended to
5 read:

6 Section 1. A board is hereby created in the Department of
7 Consumer Affairs to be known as the "State Board of Chiropractic
8 Examiners," hereinafter referred to as the board. The board shall
9 consist of seven members. Five members shall be appointed by
10 the Governor, subject to confirmation by the Senate, one of whom
11 shall be a public member. The Senate Committee on Rules and the
12 Speaker of the Assembly shall each appoint one public member.
13 Each member shall be a citizen of the United States and shall have
14 been a resident of California for five years. ~~Two members shall~~
15 ~~be public members.~~ Each licensee member shall have had at least
16 five years of licensure in this state prior to appointment. Each
17 licensee member ~~must~~ shall have pursued a resident course in an
18 approved chiropractic school or college, and ~~must~~ shall be a
19 graduate thereof and hold a diploma therefrom.

20 Not more than two persons shall serve simultaneously as
21 members of ~~said~~ the board, whose first diplomas were issued by
22 the same school or college of chiropractic, nor shall more than two
23 members be residents of any one county of the state. And no person
24 who is or within one year of the proposed appointment has been
25 an administrator, policy board member, or paid employee of any
26 chiropractic school or college shall be eligible for appointment to
27 the board. Each member of the board shall receive a per diem in
28 the amount provided in Section 103 of the Business and Professions
29 Code for each day during which he or she is actually engaged in
30 the discharge of his or her duties, together with his or her actual
31 and necessary travel expenses incurred in connection with the
32 performance of the duties of his or her office, ~~such and the~~ per
33 diem, travel expenses and other incidental expenses of the board
34 or of its members shall be paid out of the funds of the board
35 hereinafter defined and not from the state's taxes.

36 The Legislature may, upon review, repeal this section and
37 reconstitute the board.

38 SEC. 5. Section 1.5 is added to the act cited in the title, to read:

39 Sec. 1.5. Protection of the public shall be the highest priority
40 for the board in exercising its licensing, regulatory, and disciplinary

1 functions. Whenever the protection of the public is inconsistent
2 with the other interests sought to be promoted, the protection of
3 the public shall be paramount.

4 *SEC. 6. Section 2 of the act cited in the title is amended to*
5 *read:*

6 *Sec. 2. ~~The Governor shall appoint the members of the board.~~*
7 *Each appointment to the board shall be for the term of four years,*
8 *except that an appointment to fill a vacancy shall be for the*
9 *unexpired term only. Each member shall serve until his or her*
10 *successor has been appointed and qualified or until one year has*
11 *elapsed since the expiration of his or her term whichever first*
12 *occurs. No person shall serve more than two consecutive terms on*
13 *the board nor be eligible for appointment thereafter until the*
14 *expiration of four years from the expiration of the second*
15 *consecutive term, effective January 2, 1974. The Governor may*
16 *remove a member from the board after receiving sufficient proof*
17 *of the inability or misconduct of said the member.*

18 *SEC. 7. Section 3 of the act cited in the title is amended to*
19 *read:*

20 *Sec. 3. The board shall elect a chairman and a vice chairman*
21 *and a secretary to be chosen from the members of the board. The*
22 *board shall ~~employ~~ appoint a person exempt from civil service, by*
23 *and with the approval of the Director of Consumer Affairs, to be*
24 *designated as an executive officer and fix his salary with the*
25 *approval of the Director of Finance. Elections of the officers shall*
26 *occur annually at the January meeting of the board. A majority of*
27 *the board shall constitute a quorum.*

28 *It shall require the affirmative vote of four members of said the*
29 *board to carry any motion or resolution, to adopt any rule, or to*
30 *authorize the issuance of any license provided for in this act. The*
31 *executive officer shall receive a salary to be fixed by the board,*
32 *with the approval of the Director of Finance, together with his or*
33 *her actual and necessary traveling expenses incurred in connection*
34 *with the performance of the duties of his or her office, and shall*
35 *give bond to the state in such a sum and with such sureties as the*
36 *board may deem proper. He or she shall keep a record of the*
37 *proceedings of the board, which shall at times during business*
38 *hours be open to the public for inspection. He or she shall keep a*
39 *true and accurate account of all funds received and of all*
40 *expenditures incurred or authorized by the board, and on the first*

1 day of December of each year he *or she* shall file with the Governor
2 or his *or her* designee, a report of all receipts and disbursements
3 and of the proceedings of the board for the preceding fiscal year.

4 *SEC. 8. Section 4 of the act cited in the title is amended to*
5 *read:*

6 Sec. 4. Powers of the board. The board shall have power:

7 (a) To adopt a seal, which shall be affixed to all licenses issued
8 by the board.

9 (b) To adopt from time to time ~~such~~ rules and regulations as the
10 board may deem proper and necessary for the performance of its
11 work, the effective enforcement and administration of this act, the
12 establishment of educational requirements for license renewal, and
13 the protection of the public. ~~Such~~ *These* rules and regulations shall
14 be adopted, amended, repealed and established in accordance with
15 the provisions of Chapter ~~4.5~~ 3.5 (commencing with Section ~~41371~~
16 *11340*) of Part 1 of Division 3 of Title 2 of the Government Code
17 as it now reads or as it may be hereafter amended by the
18 Legislature.

19 (c) To examine applicants and to issue and revoke licenses to
20 practice chiropractic, as ~~herein~~ provided *in this act*.

21 (d) To summon witnesses and to take testimony as to matters
22 pertaining to its duties; and each member shall have power to
23 administer oaths and take affidavits.

24 (e) To do any and all things necessary or incidental to the
25 exercise of the powers and duties ~~herein~~ granted or imposed *by*
26 *this act*.

27 (f) To determine minimum requirements for teachers in
28 chiropractic schools and colleges.

29 (g) To approve chiropractic schools and colleges whose
30 graduates may apply for licenses in this state. The following shall
31 be eligible for approval:

32 (1) Any chiropractic school or college having status with the
33 accrediting agency and meeting the requirements of Section 5 of
34 this act and the rules and regulations adopted by the board.

35 (2) Any chiropractic school or college initially commencing
36 instruction prior to the effective date of the amendments to this
37 section approved by the electors at the November, 1976, general
38 election, provided ~~such that the~~ school or college meets the
39 requirements of Section 5 of this act and the rules and regulations
40 adopted by the board and provided ~~such that the~~ school or college

1 attains status with the accrediting agency within a time period
2 commencing on the effective date of this provision and ending
3 March 1, 1980.

4 (3) Any chiropractic school or college initially commencing
5 instruction subsequent to the effective date of the amendments to
6 this section approved by the electors at the November, 1976,
7 general election, provided ~~such that the~~ school or college meets
8 the requirements of Section 5 of this act and the rules and
9 regulations adopted by the board and provided ~~such that the~~ school
10 or college attains status with the accrediting agency within a time
11 period not exceeding three years following ~~such the~~ commencement
12 of instruction.

13 Upon submission of evidence satisfactory to the board that the
14 accrediting agency has unreasonably denied status to a chiropractic
15 school or college approved under paragraph (2) or (3) of this
16 subdivision by not considering the application for status submitted
17 by that school or college in a timely manner, by denying the
18 application for status submitted by that school or college without
19 good cause, or by imposing arbitrary and capricious additional
20 requirements upon that school or college as conditions for the
21 attainment of status, the board shall grant an extension of the time
22 period for the attainment of status specified in the paragraph under
23 which that school or college is approved, as it applies to that school
24 or college, of at least six months but no more than one year. Prior
25 to the expiration of ~~such the~~ extension or of any additional
26 extension the board grants, the board shall determine whether that
27 school or college has been unreasonably denied status by the
28 accrediting agency for any of the reasons specified in the
29 immediately preceding sentence during the extension. Should the
30 board determine ~~such that~~ unreasonable denial of status during the
31 extension has occurred, the board shall grant an additional
32 extension of the time period for the attainment of status, as it
33 applies to that school or college, of at least six months but no more
34 than one year.

35 As used in this section, "accrediting agency" means (1) the
36 Accrediting Commission of the Council on Chiropractic Education,
37 other chiropractic school and college accrediting agencies as may
38 be recognized by the United States Commissioner of Education,
39 or chiropractic school and college accrediting agencies employing
40 equivalent standards for accreditation as determined by the board,

(2) in the event ~~such that the~~ commission ceases to exist or ceases to be recognized by ~~such the~~ commissioner, a chiropractic school and college accrediting agency as may be designated by the board or chiropractic school and college accrediting agencies employing equivalent standards for accreditation as determined by the board, or (3) in the event ~~such that the~~ commission ceases to exist or ceases to be recognized by ~~such the~~ commissioner, no other ~~such~~ accrediting agency is recognized by ~~such the~~ commissioner, and no ~~such~~ accrediting agency is acceptable to the board, the board.

As used in this section, "status" means correspondent status, status as a recognized candidate for accreditation, accredited status, or other similar status as may be adopted and used by the accrediting agency.

As used in this section, "in a timely manner" means within the time deadlines as may be established by the accrediting agency for submission of applications, consideration of applications submitted, acceptance or rejection of applications submitted, and other similar functions, as those time deadlines are interpreted by the board.

As used in this section, "without good cause" means not in accordance with rules and regulations that may be established by the accrediting agency as conditions for the attainment of status, as those rules and regulations are interpreted by the board.

As used in this section, "arbitrary and capricious additional requirements" means requirements ~~which that~~ may be imposed by the accrediting agency as conditions for the attainment of status during the time period specified for the attainment of status by a chiropractic school or college that, in the board's judgement, cannot be satisfied within ~~such the~~ time period or do not serve to improve the educational standards or quality of ~~such the~~ school or college.

(h) The board may employ ~~such any~~ investigators, clerical assistants, commissioners on examination, and other employees as it may deem necessary to carry into effect the provisions of this act, and shall prescribe the duties of ~~such those~~ employees. *Persons employed pursuant to this subdivision shall be subject to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 5 of the Government Code).*

SEC. 9. Section 6 of the act cited in the title is amended to read:

1 Sec. 6. (a) The office of the board shall be in the City of
2 Sacramento. Suboffices may be established in Los Angeles and
3 San Francisco, and ~~such~~ any records as may be necessary may be
4 transferred temporarily to ~~such~~ the suboffices. Legal proceedings
5 against the board may be instituted in any one of the three cities.

6 (b) *All meetings of the board shall be conducted in accordance*
7 *with the provisions of the Bagley-Keene Open Meeting Act (Article*
8 *9 (commencing with Section 11120) of Chapter 1 of Part 1 of*
9 *Division 3 of Title 2 of the Government Code).*

10 (b)
11 (c) The board shall meet as a board of examiners at least twice
12 each calendar year, at ~~such~~ times and places as may be found
13 necessary for the performance of its duties.

14 (d) *The board shall comply with the requirements of Chapter*
15 *22.5 (commencing with Section 7528) of Division 7 of Title 1 of*
16 *the Government Code and with the provisions of Article 10*
17 *(commencing with Section 11364) of Chapter 3.5 of Part 1 of*
18 *Division 3 of Title 2 of the Government Code.*

19 (e)
20 (e) Examinations shall be written, oral, and practical, covering
21 chiropractic as taught in chiropractic schools or colleges, designed
22 to ascertain the fitness of the applicant to practice chiropractic.
23 ~~Said-~~The examination shall include at least each of the subjects as
24 set forth in Section 5 ~~hereof of this act~~. Identity of the applicants
25 shall not be disclosed to the examiners until after examinations
26 have been given final grades. A license shall be granted to any
27 applicant who ~~shall make~~ makes a general average of 75 percent,
28 and ~~does~~ not fall below 60 percent in more than two subjects or
29 branches of the examination and ~~receive~~ receives a 75 percent
30 score in all parts of the practical examination as designated by the
31 board. Any applicant failing to make the required grade shall be
32 given credit for the branches passed, and may, without further cost,
33 take the examination at the next regular examination on the subjects
34 in which he or she failed. For each year of actual practice since
35 graduation the applicant shall be given a credit of 1 percent on the
36 general average.

37 (d)
38 (f) An applicant having fulfilled the requirements of Section 5
39 and paid the fee thereunder, and having obtained a diplomate
40 certificate from the National Board of Chiropractic Examiners,

1 may offer such ~~the~~ certificate together with a transcript of grades
2 secured in ~~said the~~ national board examination, and the California
3 Board of Chiropractic Examiners may accept ~~same those~~ in lieu
4 of all or a portion of the California board examination, as
5 determined by the board.

6 *SEC. 10. Section 6.5 is added to the act cited in the title, to*
7 *read:*

8 Sec. 6.5. The employment of legal counsel by the board is
9 subject to the requirements of Section 11040 of the Government
10 Code.

11 *SEC. 11. Section 8 of the act cited in this title is amended to*
12 *read:*

13 Sec. 8. No ~~blind~~ person shall be denied admission into any
14 college or school of chiropractic or denied the right to take any
15 examination given by such school or college or denied a diploma
16 or certificate of graduation or a degree or denied admission into
17 any examination for a state license or denied a regular license to
18 practice chiropractic ~~on the ground that he or she is blind because~~
19 *of a disability, as defined by the Americans with Disability Act of*
20 *1990 (42 U.S.C. Sec. 12101, et seq.).*

21 *SEC. 12. Section 14 of the act cited in the title is amended to*
22 *read:*

23 Sec. 14. The executive officer shall at the end of each month
24 report to the State Controller the total amount of money received
25 by the board from all sources, and shall deposit with the ~~State~~
26 Treasurer the entire amount of ~~such those~~ receipts, and the ~~State~~
27 Treasurer shall place the money so received in a special fund, to
28 be known as the "State Board of Chiropractic Examiners' Fund".
29 ~~Such Moneys in the fund shall be expended in accordance with~~
30 ~~law for all necessary and proper expenses in carrying out the~~
31 ~~provisions of this act, upon proper claims approved by said the~~
32 ~~board or a finance committee thereof. All appropriations from the~~
33 ~~fund shall be made by the Legislature in the annual Budget Act.~~

34 *SEC. 13. Section 18.5 is added to the act cited in this title, to*
35 *read:*

36 Sec. 18.5. The provisions of any other statute of general
37 application to health care providers or health care related boards
38 within the Department of Consumer Affairs within the Business
39 and Professions Code, including, but not limited to, Sections 12.5,
40 23.9, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6,

1 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487,
2 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701,
3 702, 703, 704, 710, 716, 730.5, 731, and 851 of, and Article 6
4 (commencing with Section 650) and Article 11 (commencing with
5 Section 800) of Chapter 1 of Division 2 of, the Business and
6 Professions Code, are applicable to persons licensed by the board
7 under this act and are applicable to the board. Additionally, any
8 provisions of the Government Code that are generally applicable
9 to state agency officials and employees are applicable to the board
10 and its staff under this act.

11 *SEC. 14. (a) In addition to the appropriation made by Item*
12 *8500-001-0152 of Section 2.00 of the Budget Act of 2007, the sum*
13 *of one million five hundred forty-two thousand dollars (\$1,542,000)*
14 *is hereby appropriated from the revenue in the State Board of*
15 *Chiropractic Examiners Fund that consists of fees paid for the*
16 *issuance and renewal of licenses, for the support of the Board of*
17 *Chiropractic Examiners.*

18 *(b) It is the intent of the Legislature, either by the Budget Act*
19 *of 2008 or by another bill, to appropriate three hundred thousand*
20 *dollars (\$300,000) from the State Board of Chiropractic*
21 *Examiner's Fund to reimburse to the Secretary of State the printing*
22 *costs incurred in placing Section 1 and Sections 4 to 13, inclusive,*
23 *of this act on the ballot at the June 3, 2008, primary election, as*
24 *described in Section 15 of this act.*

25 *SEC. 15. Section 1 and Sections 4 to 13, inclusive, of this act*
26 *shall become effective only when submitted to and if approved by*
27 *the electors pursuant to subdivision (c) of Section 10 of Article II*
28 *of the California Constitution. The Secretary of State is hereby*
29 *directed to place those provisions on the ballot of the June 3, 2008,*
30 *primary election for approval by the electors in accordance with*
31 *the applicable provisions of law.*

32 *SEC. 16. Section 2.5 of this bill incorporates amendments to*
33 *Section 101 of the Business and Professions Code proposed by*
34 *both this bill and SB 534. It shall only become operative if (1) both*
35 *bills are enacted and become effective on or before January 1,*
36 *2008, (2) each bill amends Section 101 of the Business and*
37 *Professions Code, and (3) this bill is enacted after SB 534, in which*
38 *case Section 2 of this bill shall not become operative.*

39 ~~SECTION 1. The Legislature finds and declares all of the~~
40 ~~following:~~

1 ~~(a) The State of California endeavors to meet certain goals~~
2 ~~regarding more transportation choices, reducing traffic congestion,~~
3 ~~improving air quality, conserving energy, reducing greenhouse~~
4 ~~gas emissions, improving social equity, and increasing physical~~
5 ~~activity to promote public health. Increased levels of bicycling~~
6 ~~rate by state employees and by visitors to state offices would help~~
7 ~~reach these goals.~~

8 ~~(b) The state invests approximately \$2 billion annually for~~
9 ~~design, construction, and renovation, and more than six hundred~~
10 ~~million dollars (\$600,000,000) annually for energy, water, and~~
11 ~~waste disposal at state-funded facilities.~~

12 ~~(c) The state invests an unspecified amount in funding for~~
13 ~~automobile parking for state employees and visitors.~~

14 ~~(d) An opportunity exists for the state to foster continued~~
15 ~~economic growth and provide environmental leadership by~~
16 ~~incorporating bicycle facilities into the state capital outlay and~~
17 ~~building management processes.~~

18 ~~(e) The widespread adoption of bicycle facilities principles~~
19 ~~would result in significant long-term benefits to the state's~~
20 ~~environment, including reductions in smog generation and~~
21 ~~greenhouse gas emissions, increased employee and public health,~~
22 ~~and reduced congestion.~~

23 ~~(f) It is critical that the state provide leadership to both private~~
24 ~~and public sectors to provide bicycle facilities for employees and~~
25 ~~visitors.~~

26 ~~(g) It is the policy of the state to site, design, deconstruct,~~
27 ~~construct, renovate, operate, and maintain state buildings that are~~
28 ~~models of energy efficiency, while encouraging energy efficient~~
29 ~~travel to and from buildings, and providing healthy, productive,~~
30 ~~and comfortable indoor environments and long-term benefits to~~
31 ~~Californians.~~

32 ~~(h) It is the intent of the Legislature in enacting this act to~~
33 ~~increase the availability and usefulness of bicycle facilities in~~
34 ~~state-owned and state-leased buildings by providing safe and secure~~
35 ~~bicycle parking and storage and comfortable changing and~~
36 ~~showering areas, and to promote alternative transportation to the~~
37 ~~workplace.~~

38 ~~SEC. 2. Article 3.5 (commencing with Section 14691) is added~~
39 ~~to Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government~~
40 ~~Code, to read:~~

Article 3.5. Green and Healthy Workplace Bicycle Facilities
Act of 2007

14691. This act shall be known, and may be cited, as the Green and Healthy Workplace Bicycle Facilities Act of 2007.

14692. (a) On or before July 1, 2009, the department shall adopt regulations for the construction and renovation of state-owned buildings used primarily for office functions and other state-owned buildings as deemed appropriate by the department that establish standards regarding bicycle facilities, including short-term visitor bicycle parking, long-term employee bicycle parking, showers, and clothing lockers.

(b) When adopting regulations pursuant to subdivision (a), the department shall consider those aspects of existing relevant information and guidelines that maximize the utility of bicycle facilities, and shall allow for flexibility to meet the state's building standards. The existing relevant guidelines and information shall include, but are not limited to, both of the following:

(1) The Sacramento Area Bicycle Advocates State Bicycle Facilities Statewide Policies and Recommendations.

(2) The Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines.

(c) In adopting the regulations pursuant to subdivision (a), the department shall consult with the State Architect and other appropriate state agencies, the building and construction industry, recognized bicycle advocacy groups, the League of California Cities, the California State Association of Counties, other interested organizations, and the public.

14692.5. (a) For an existing state-owned building without short-term visitor bicycle parking, meeting the regulations adopted pursuant to Section 14692, short-term bicycle parking meeting the regulations adopted pursuant to Section 14692 shall be added before December 31, 2009.

(b) For an existing state-owned building without bicycle facilities for employees meeting the regulations adopted pursuant to Section 14692, the addition of secure long-term bicycle parking, showers, and clothing lockers shall be a priority when the building is renovated.

(c) For state-leased buildings used primarily for office functions and other state-leased buildings as deemed appropriate by the

1 department, the state, when negotiating or renegotiating a lease,
2 shall make every effort to include provision of facilities for bicycle
3 commuters and bicycle parking for visitors.
4 ~~14693. Each state agency shall develop a program to manage~~
5 ~~its bicycle facilities so that bicycle parking and lockers are fairly~~
6 ~~assigned and access to showers is available. Facilities shall be~~
7 ~~available for workers at state buildings, whether they are state~~
8 ~~employees, contract employees, interns, or volunteers.~~
9 ~~14693.5. Each state agency shall develop a program to promote~~
10 ~~and encourage bicycle commuting and the use of bicycles for~~
11 ~~work-related trips.~~

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
www.chiro.ca.gov



November 30, 2007

The Honorable Bill Emmerson
California State Assembly
State Capitol, Room 4158
Sacramento, California 95814

Dear Assembly Member Emmerson:

The California Board of Chiropractic Examiners (Board), would like to thank you for agreeing to work with us to address the Board's fiscal issues in order to provide continued protections for California's consumers. I would also like to advise you of the Board's progress toward addressing the concerns that were raised by the Legislature previously.

The Board took very seriously the message from both the Legislature and the Governor-- that the Board's business be conducted in the most ethical and responsible manner and that consumer protection should be paramount. We have worked closely with the Department of Consumer Affairs (Department) over the past several months to improve the functions and services of the Board and are grateful for the guidance and assistance they have provided us. We have contracted with the Department to provide the Board with legal, personnel, and fiscal services. This assistance has been invaluable to the Board both in terms of public service and effective administration.

In addition to the progress we have made as a Board, I also feel compelled to advise you of the Board's current funding situation and the impact it may have on the protection of California's consumers. The 2007-08 budget provided six months of funding. On Friday, November 30, 2007, the Department of Finance delivered a Deficiency Letter to the Legislature regarding the Board's budget. Being mindful of the Board's legal responsibility to protect California's consumers, we have initiated a series of reductions to allow us to operate as long as possible including the following:

- Instituted a hiring freeze
- Terminated all temporary personnel
- Implemented a lay-off plan to reduce the number of permanent staff from 15 down to 5 employees effective January 7, 2008.
- Reduced the Attorney General and Office of Administrative Hearing allocations by 65%.
- Terminated all reinstatement hearings through June 30, 2008

While we have tried to stretch our budget as far as possible and the Department has provided us with a great deal of administrative assistance; I feel compelled to advise you that the Board can not continue to meet its statutory responsibilities without additional funding and the protection of the public could be at risk.

Given our limited budget, we are unable to adequately fulfill the following essential functions:

- Conducting complaint investigations
- Initiating disciplinary actions through the Attorney General's Office

- Monitoring licensees on probation
- Processing licenses in a timely fashion

The Board is officially funded through January, 2008. Allowing for the administrative reductions we have implemented, and provided that the deficiency funding is approved, we can operate on a very limited capacity until June 30, 2008. Without an approved deficiency, we can operate at a minimal level only until April 30, 2008. In order for the Board to provide all of the statutory consumer protections, the deficiency and additional funding would be necessary. The Board welcomes the opportunity to work with you and the Legislature to address these funding problems in your bill.

I would be happy to meet with you or your staff to answer any questions that you may have. It is my sincere hope that together we will be able to overcome whatever obstacles have been encountered in the past to ensure that the laws protecting consumers are enforced and that individuals who have worked so hard to become Doctors of Chiropractic will continue to be licensed by the State of California.

Sincerely,



Brian Stiger
Executive Officer

cc: Senator Tom Torlakson, Chair
Senate Appropriations Committee
Senator Dave Cox, Vice-Chair
Senate Appropriations Committee
Assembly Member Mark Leno, Chair
Assembly Appropriations Committee
Assembly Member Mimi Waters, Vice-Chair
Assembly Appropriations Committee
Senator Mark Ridley-Thomas, Chair
Senate Business & Professions Committee
Assembly Member Mike Eng, Chair
Assembly Business & Professions Committee
Richard Tyler, D.C., Board Chair
California Board of Chiropractic Examiners
Members, Board of Chiropractic Examiners
Chris Kahn, Legislative Affairs Secretary
Office of the Governor
Ana Matosantos, Deputy Legislative Affairs Secretary
Office of the Governor

Appropriation Bill Language

Protection of the public shall be the highest priority for the State Board of Chiropractic Examiners in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

In addition to the appropriation made by Item 8500-001-0152 of Section 2.00 of the Budget Act of 2007, the sum of \$539,000 is hereby appropriated from the State Board of Chiropractic Examiners fund that consists of fees paid for the issuance and renewal of licenses, for the support of the State Board of Chiropractic Examiners.

This act is an urgency statute necessary for the immediate preservation of the public health and safety and shall go into immediate effect.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES**

January 10, 2008
400 R Street, Room 101
Sacramento, CA 95814

Board Members Present

Frederick Lerner, DC., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Tyler called the meeting to order at 10:47 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Board Member Opening Remarks

Dr. Tyler commented on the events of the past year. He recognized the Board Members and Board Staff for their good work over the past year and offered advice to the Board in moving forward. Dr. Tyler commended the International Chiropractic Association of California (ICAC), the California Chiropractic Association (CCA), and the International Chiropractic Association (ICA) for their support over the past year.

Judge Duvaras recognized the CCA for its positive comments about the Board in an editorial printed on July 23, 2007.

Dr. Lubkin expressed his dedication to consumer protection and complemented Board Members and Board Staff for their outstanding efforts.

Election of Officers for 2008

Dr. Tyler asked for all nominations for Board Chair.

JUDGE DUVARAS MOVED TO NOMINATE DR. LERNER FOR BOARD CHAIR. DR. COLUMBU SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Dr. Tyler asked for all nominations for Vice Chair.

DR. COLUMBU MOVED TO NOMINATE DR. LUBKIN FOR VICE CHAIR. JUDGE DUVARAS SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Dr. Tyler asked for all nominations for Secretary.

DR. LUBKIN MOVED TO NOMINATE DR. COLUMBU FOR SECRETARY. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

New Chair's Opening Remarks

Dr. Lerner recognized Dr. Tyler for his leadership over the past year and presented him with a plaque.

Judge Duvaras complemented Dr. Tyler for his dedication and leadership during his tenure as Board Chair.

Dr. Lerner, as the newly elected chair, reiterated the board's mission is to protect the public. He made restoration of the budget and improving enforcement as the board's top priorities.

Dr. Lerner expressed interest in revamping continuing education, establishing a public relations committee, and adopting a number of regulations.

Approval of Minutes

November 27, 2007, Open Session

MR. CONRAN MOVED TO ADOPT THE MINUTES AS AMENDED. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Board Member Training on the Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell advised the Board to always allow members of the public the opportunity to express themselves freely and openly. Ms. Powell complemented the Board for showing respect to the public during past meetings.

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Ms. Powell reminded the Board Members not to make decisions on items not on an agenda or outside of Board meetings.

Executive Officer's Report

Mr. Stiger provided a status of the budget. He projected a \$170,000 deficit at the end of the fiscal year. Mr. Stiger is confident he will be able to find additional savings to address the projected deficit.

Mr. Stiger informed the Board that the lay-off was effective on January 7, 2008. Staff members are wearing multiple hats. Mr. Stiger expressed concern that if savings are not achieved, further cuts may be necessary. Mr. Stiger reiterated that the budget is a major concern.

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Mr. Stiger provided an update on licensing and enforcement statistics. Mr. Conran stated that licensees that don't pay renewal fees on time should be held accountable.

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Manipulation Under Anesthesia (MUA)

Dr. Lerner informed the board that the MUA committee voted to recommend to the full Board to make the legal opinion on MUA a public document.

Ms. Powell reiterated that the Board requested Ms. Powell to write the legal opinion after meeting with the OAL (Office of Administrative Law).

During the meeting, OAL indicated that a legal opinion from DCA would be sufficient to overcome the absence of a legal opinion in the previous MUA proposed regulation package that was previously disapproved by OAL.

DR. LUBKIN MOVED TO MAKE THE LEGAL OPINION PUBLIC. MR. CONRAN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Enforcement Committee

Dr. Lubkin informed the Board that the committee adopted proposed regulation language for citation and fine authority and a letter of admonishment.

Mr. Conran expressed concern that Board Members have not had the opportunity to review the

language and the public has not the opportunity to express comments.

MR. CONRAN MOVED TO PLACE THE CITE AND FINE AUTHORITY AND LETTER OF ADMONISHMENT ON THE MARCH 27, 2008 MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 6-0. MOTION CARRIED.

Legislative Committee

Dr. Lerner discussed Assembly Bill 163 and asked if Board Members wanted to take a position on this bill. Mr. Conran stated it is inadvisable to take a position on Assembly Bill 163 at this time given our current budget situation.

Mr. Stiger indicated that this bill may not be taken up in the Legislature until next summer.

MR. CONRAN MOVED TO TAKE A WATCH POSITION ON ASSEMBLY BILL 163. DR. LUBKIN SECONDED THE MOTION. VOTE 6-0. MOTION CARRIED.

Mr. Conran recommended that the board adopt a stronger vetting process when corresponding with the capitol and that all correspondence be reviewed by the Executive Officer and Staff Counsel.

Announcements

The next Board meeting will be conducted on March 27, 2008 in Sacramento.

Public Comment

David Prescott asked when the next meeting would be held to address his petition to change the regulations. Mr. Stiger stated that the meeting may not take place until early March 2008.

Dr. Lerner assured Mr. Prescott that this would be placed in a committee at the earliest possible date.

Bill Howe, CCA, offered assistance to the Board to resolve the budget issue.
Mr. Howe thanked Mr. Stiger for his interview with CCA and the information that he provided.

New Business

Mr. Stiger suggested that Strategic Planning be placed on a future agenda.

Dr. Charles Davis, D.C., ICAC requested that the expert witness guideline be placed on the next agenda.

Dr. Lerner adjourned the meeting at approximately 1:15 p.m.

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**NOTICE OF PUBLIC MEETING - AMENDED**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the Administrative Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C.

CLOSED SESSION**Discussion on Pending Litigation**

Pursuant to California Government Code Section 11126(e)

- ***David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes***
Sacramento County Superior Court, Case No. 07AS03721
- ***Catherine Hayes v. Board of Chiropractic Examiners***
Department of Fair Employment and Housing and Department of Industrial Relations Complaints
- ***Bryan Meredith, D.C. v. M. Maggie Craw, D.C. et al.***
Sacramento County Superior Court, Case No. 07AS03639

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126(c)(3)

- Aster Kifle-Thompson

PUBLIC SESSION**Call to Order****Chair's Report****Committees and Committee Assignments'****BCE Staff Recognition****Approval of Minutes**

January 10, 2008, Open Session

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws

Executive Officer's Report

- Budget
- Licensing
- Enforcement

NBCE Delegate Selection – Information Only

Citation and Fine Language Discussion and Possible Action

Letter of Admonishment Discussion and Possible Action

Bureau of State Audits Report Discussion and Possible Action

COMMITTEE REPORTS

Legislative Committee - Discussion and Possible Action:

- Assembly Bill 450
- Assembly Bill 1861
- Senate Bill 1402

Enforcement Committee - Discussion and Possible Action:

- Enforcement Committee (The Board may take action on any agenda item listed on the attached Enforcement Committee Agenda)

Manipulation Under Anesthesia (MUA) Committee - Discussion and Possible Action:

- MUA Committee (The Board may take action on any agenda item listed on the attached MUA Committee Agenda)

Administrative Committee – Discussion and Possible Action:

- Administrative Committee (The Board may take action on any agenda item listed on the attached Administrative Committee Agenda)

Announcements

Next Board meeting – May 22, 2008, Sacramento

Public Comment

New Business

- Future Agenda Items
- Other Issues

Adjournment

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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AGENDA**PUBLIC SESSION****Call to Order**

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- Budget
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Citation and Fine Language

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Committee Assignments
 Revised March 2008

Committee	Members	Responsibilities
Continuing Education	Richard Tyler, D.C. (Chair) Hugh Lubkin, D.C.	Proposes policies, standards and approves CE providers
Enforcement	Hugh Lubkin, D.C. (Chair) Judge Duvaras	Proposes regulations, policies, and standards to ensure compliance with chiropractic law and regulations
Government Relations	Jim Conran, Chair Hugh Lubkin, D.C.	Proposes policies to address audit and Sunset Review Committee deficiencies; oversees all administrative issues regarding BCE operations
Legislation / Regulation	Frederick Lerner, D.C. (Chair) Francesco Columbu, D.C.	Proposes positions on legislative bills and regulatory matters
Licensing	Judge Duvaras, Chair Richard Tyler, D.C.	Proposes policies and standards regarding chiropractic colleges doctors of chiropractic and satellite offices
Public Relations	Fred Lerner, D.C. (Chair) Jim Conran	Develops strategies to communicate with the public through various forms of media.
Scope of Practice	Hugh Lubkin, D.C., (Chair) Fred Lerner, D.C.	Reviews and proposes positions on scope of practice issues
Strategic Planning	Richard Tyler, D.C. (Chair) Francesco Columbu, D.C.	Develops draft Strategic Plans and monitors the BCE's progress in achieving goals and objectives

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Jim Conran, Public Member
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Call to Order

Dr. Tyler called the meeting to order at 10:47 a.m.

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Dr. Charles Davis, D.C., ICAC requested that the expert witness guideline be placed on the next agenda.

Dr. Lerner adjourned the meeting at approximately 1:15 p.m.

**BOARD OF CHIROPRACTIC EXAMINERS
PROJECTED EXPENDITURES FOR FY 2007/08
AS OF FEBRUARY 29, 2008**

OBJECT	DESCRIPTION	BUDGET	A YEAR-TO-DATE EXPENDITURES @ 02/29/08
	PERSONAL SERVICES (February)		
003	SALARY & WAGES	320,621.00	332,759.15
033	TEMPORARY HELP	-	4,860.82
063	STATUTORY-EXEMPT	40,164.00	57,102.50
063-01	BOARD MEMBERS	8,000.00	-
083	OVERTIME	2,308.00	3,226.74
101	STAFF BENEFITS	148,907.00	153,485.60
	Total Personal Services	520,000.00	551,434.81
	OPERATING EXPENSES & EQUIPMENT (Jan)		
201	GENERAL EXPENSE	31,000.00	6,408.10
241	PRINTING	3,000.00	1,711.55
251	COMMUNICATIONS	27,000.00	9,542.94
261	POSTAGE	3,000.00	2,360.93
291	TRAVEL: IN-STATE	9,000.00	5,779.72
311	TRAVEL: OUT-OF-STATE	12,000.00	2,162.68
331	TRAINING	1,000.00	300.00
341	FACILITIES OPERATION	110,000.00	72,183.95
382	CONS/PROF SERV-INTERDEPT.	26,000.00	24,786.10
396.01	AG INVEST. JUS	400,000.00	247,218.93
396.02	AG FINGERPRINTS	6,000.00	2,450.00
397	OFC ADMIN HEARING	100,000.00	38,258.00
402	CONS/PROF SERV-EXTERNAL	441,000.00	54,950.71
418.05	CONS INVESTIGATION CONTRACTS	65,000.00	54,433.41
428	CONSOLIDATED DATA CENTER	18,000.00	9,175.29
434	INTERAGENCY AGREEMENT-DP	-	-
435	D P-NOT OTHERWISE CLASS.	-	242.39
435.01	IT CONSULTANT	60,000.00	14,640.00
438	PRO-RATA	127,000.00	-
451	EQUIPMENT	-	-
	Total Operating Exp & Equip	1,439,000.00	546,604.70
	TOTAL AUTHORIZED EXPENDITURES	1,959,000.00	1,098,039.51
	SCHEDULE OF REIMBURSEMENTS	-22,000.00	-2,856.00
	NET EXPENDITURES	1,937,000.00	1,095,183.51

**BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA
As of MARCH 1, 2008**

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13833	1056	7827
SATELLITES	2237	852	4814
CORPORATIONS	1296	366	980
REFERRALS	17	15	4
TOTALS	17383	2289	13625

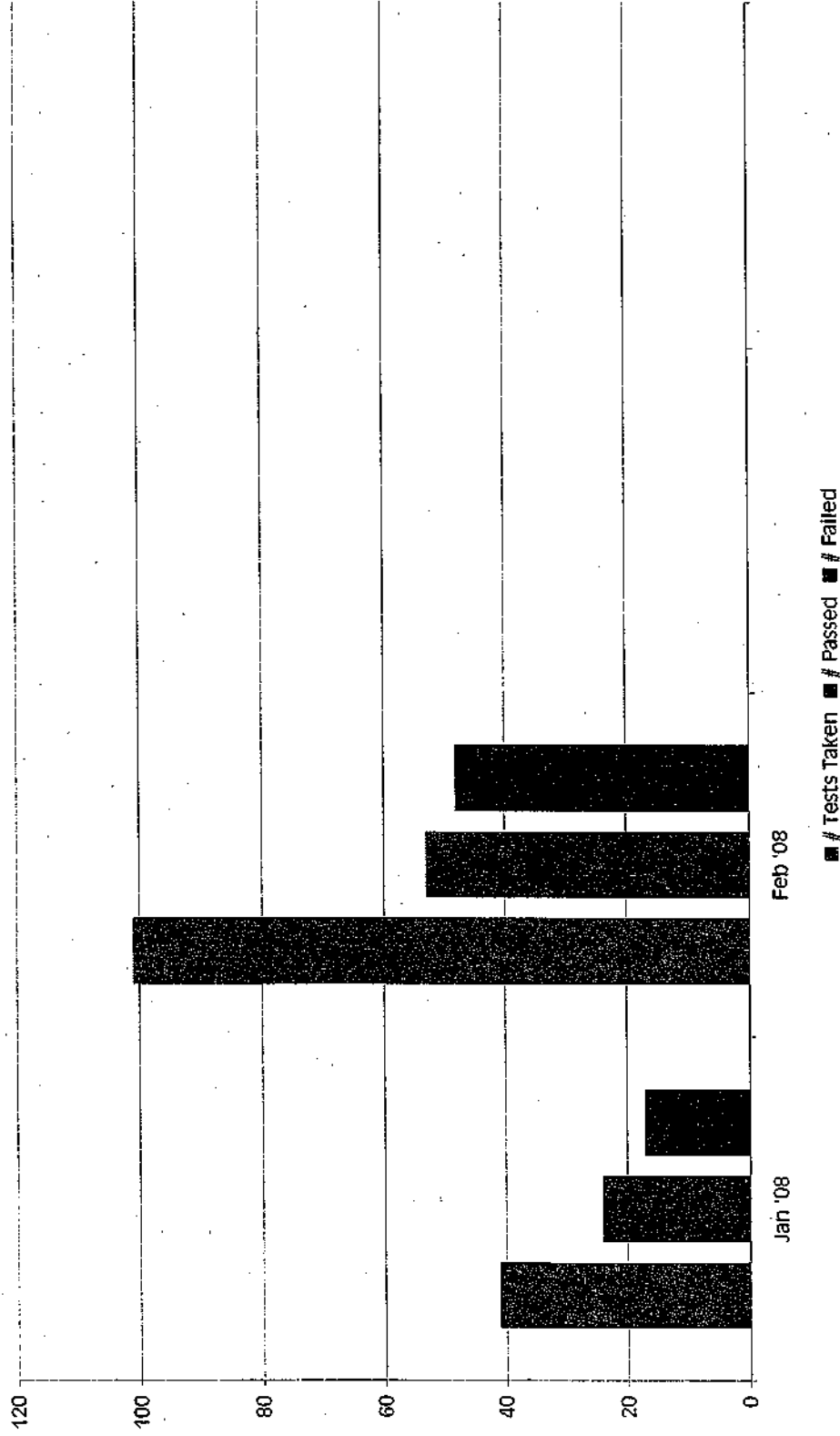
As of MARCH 1, 2007

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13783	1075	7553
SATELLITES	2027	1365	3565
CORPORATIONS	1221	294	967
REFERRALS	17	15	4
TOTALS	17048	2749	12089

2008 Chiropractic Law & Professional Practice Exam (CLPPE)

	# Tests Taken	# Passed	# Failed
Jan '08	41	24	17
Feb '08	101	53	48

*78% Needed to Pass the CLPPE



Violation Codes/Descriptions

The Chiropractic Initiative Act of California (ACT):

- 10 – Rules of Professional Conduct
- 15 – Noncompliance With and Violations of Act

California Code of Regulations (CCR):

- 302(a) – Scope of Practice
- 303 – Filing of Addresses
- 308 – Display of License
- 311 – Advertisements
- 312 – Illegal Practice
- 316 – Responsibility for Conduct on Premises
- 317 – Unprofessional Conduct
- 318 – Chiropractic Patient Records/Accountable Billing
- 319 – Free or Discount Services
- 355 – Renewal and Restoration
- 360 – Continuing Education Audits
- 367.5 – Application, Review of Refusal to Approve (corporations)
- 367.7 – Name of Corporation

Business and Professions Code (BP):

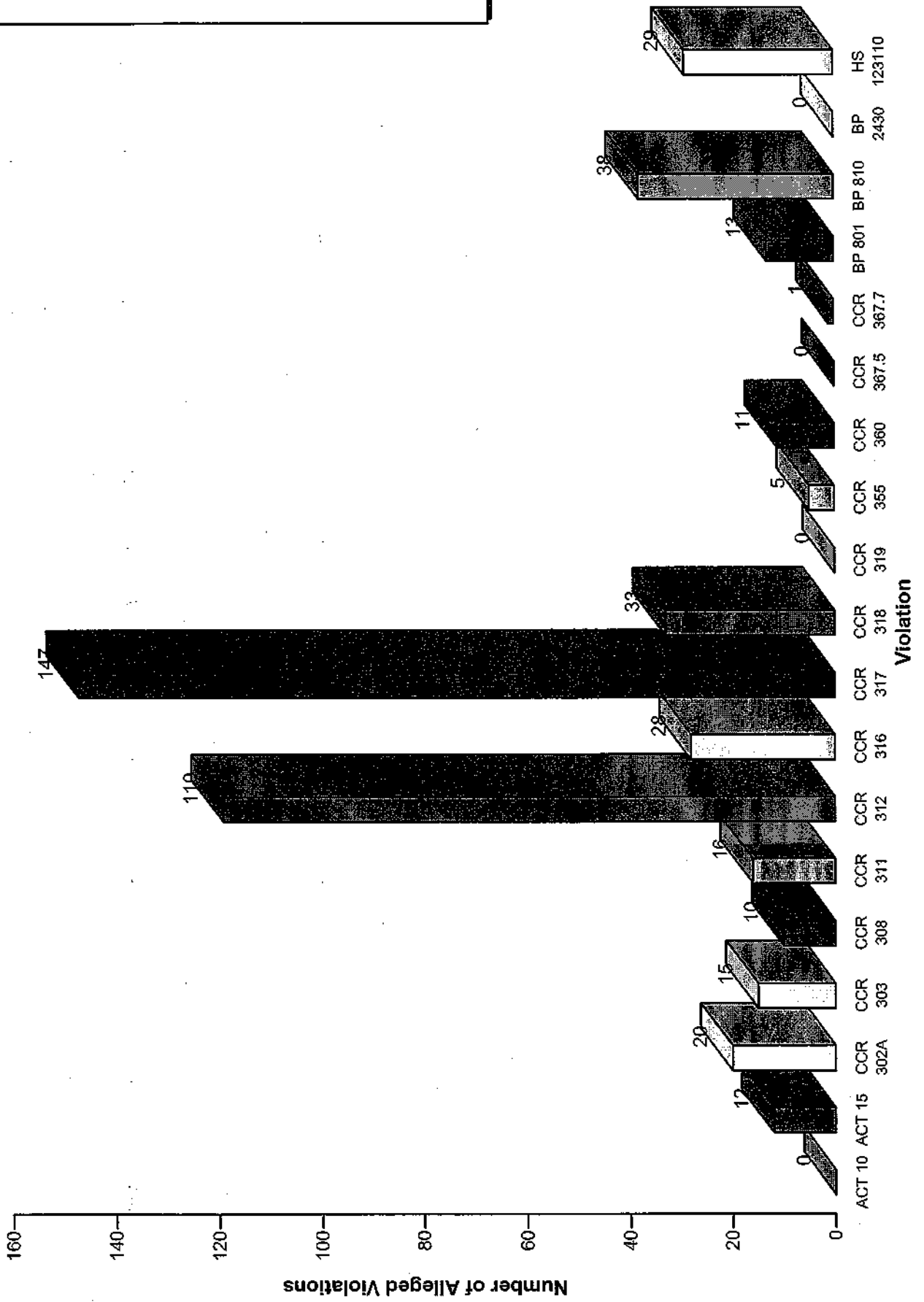
- 801 – Professional Reporting (malpractice settlements)
- 810 – Insurance Fraud
- 2430 – Default on Health Education Assistance Loan

Health and Safety Code (HS):

- 123110 – Patient Access to Health Records

FISCAL YEAR 2008

July 1, 2007 - February 29, 2008
 Total Number of Complaints Opened - 401
 Total Number of Violations - 497
 (A complaint may contain multiple violations)

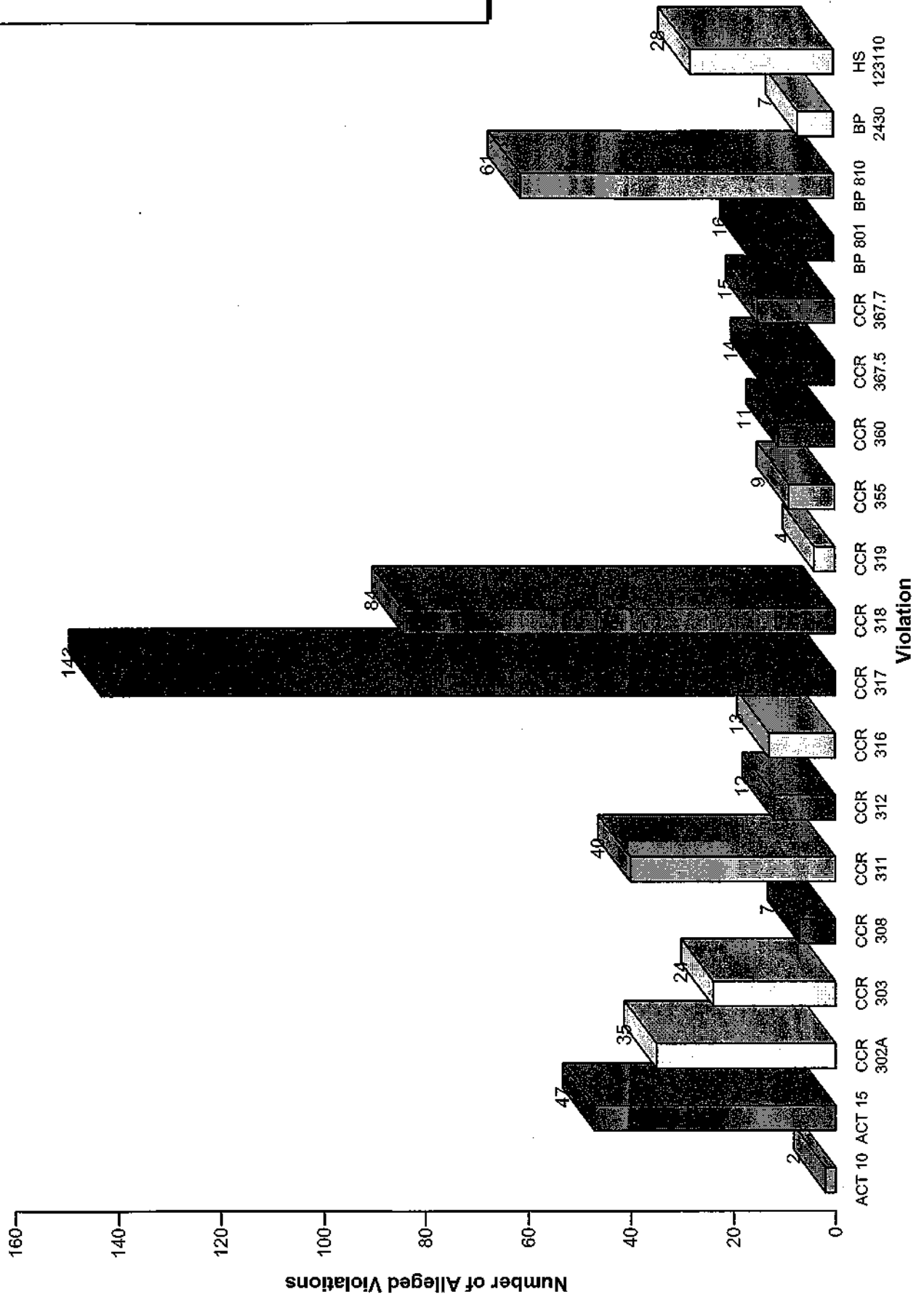


- ACT 10
- ACT 15
- CCR 302A
- CCR 303
- CCR 308
- CCR 311
- CCR 312
- CCR 316
- CCR 317
- CCR 318
- CCR 319
- CCR 355
- CCR 360
- CCR 367.5
- CCR 367.7
- BP 801
- BP 810
- BP 2430
- HS 123110

FISCAL YEAR 2007

July 1, 2006 - December 31, 2006
 Total Number of Complaints Opened - 383
 Total Number of Violations - 572
 (A complaint may contain multiple violations)

- ACT 10
- ACT 15
- CCR 302A
- CCR 303
- CCR 308
- CCR 311
- CCR 312
- CCR 316
- CCR 317
- CCR 318
- CCR 319
- CCR 355
- CCR 360
- CCR 367.5
- CCR 367.7
- BP 801
- BP 810
- BP 2430
- HS 123110



THE FOLLOWING PROPOSED LANGUAGE WAS APPROVED BY THE
ENFORCEMENT COMMITTEE ON JANUARY 10, 2008.

PROPOSED REGULATIONS RE CITE AND FINE

§390. Issuance of Citations and Fines.

(a) The Executive Officer of the board or his/ or her designee may issue a citation containing an order to pay a fine between \$100 and \$5,000 and with an order of abatement against a licensee for any violation of the Act or the California Code of Regulations or any laws governing the practice of chiropractors which would be grounds for discipline. A citation may be issued without the assessment of a fine, when determined by the Executive Officer or his or her designee.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law and/or regulation alleged to have been violated.

(c) The citation shall be served upon the cited person either individual personally or by certified United States mail.

NOTE: Authority cited: Sections 125.9, 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.1. Criteria to Be Considered.

In the issuance of any citation, the following factors shall be considered:

- (a) Nature and severity of the violation.
- (b) Length of time that has passed since the date of the violation.
- (c) Consequences of the violation, including potential or actual patient harm.
- (d) History of previous violations of the same or similar nature.
- (e) Evidence that the violation was willful.
- (f) Gravity of the violation.
- (g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

~~§390.2. Violation Codes and Penalty.~~

~~(a) The issuance of a citation can be for any of the following violations:~~

- ~~Title 16 California Code of Regulations Section 302(a)(7)~~
- ~~Title 16 California Code of Regulations Section 303~~
- ~~Title 16 California Code of Regulations Section 308~~
- ~~Title 16 California Code of Regulations Section 310~~
- ~~Title 16 California Code of Regulations Section 310.2~~
- ~~Title 16 California Code of Regulations Section 311~~
- ~~Title 16 California Code of Regulations Section 312~~
- ~~Title 16 California Code of Regulations Section 312.4~~
- ~~Title 16 California Code of Regulations Section 313~~
- ~~Title 16 California Code of Regulations Section 317(d)~~
- ~~Title 16 California Code of Regulations Section 317(f)~~
- ~~Title 16 California Code of Regulations Section 317(p)~~
- ~~Title 16 California Code of Regulations Section 317(r)~~
- ~~Title 16 California Code of Regulations Section 317(u)~~
- ~~Title 16 California Code of Regulations Section 317.4~~
- ~~Title 16 California Code of Regulations Section 318~~
- ~~Title 16 California Code of Regulations Section 319~~
- ~~Title 16 California Code of Regulations Section 355(b)~~
- ~~Title 16 California Code of Regulations Section 367.5(e)~~
- ~~Title 16 California Code of Regulations Section 367.7~~
- ~~Chiropractic Initiative Act Section 15~~
- ~~Business and Professions Code Section 725~~
- ~~Business and Professions Code Section 1054~~
- ~~Business and Professions Code Section 1055~~
- ~~Business and Professions Code Section 17500~~
- ~~Health and Safety Code Section 123110~~

~~(b) In his/her discretion, the executive director or designee may issue an order of abatement for the first violation of any provision set forth in subsection (a).~~

~~(c) If a licensee has previously been issued two citations for violation of any of the code sections in subsection (a), the third violation will result in filing an accusation.~~

~~NOTE: Authority cited: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, State. 1923, p. 1xxxviii. Reference: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, State. 1923, p. 1xxxviii.~~

~~HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39). 2. Amendment of subsection (a) filed 10-16-2003; operative 11-15-2003 (Register 2003, No. 42).~~

§390.3. Citations for Unlicensed Practice.

The Executive Officer or his/her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the board and who is not otherwise exempt from licensure. Each citation may contain an order of abatement fixing a reasonable period of time for an abatement and an order to pay a fine not to exceed \$5,000 for each violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.4. Contested Citations.

(a) The citation shall inform the licensee that if he/she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing provided for in subdivision (a) of this section, the cited person may, within 14 calendar days after service of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the person cited and/or his/her legal counsel or authorized representative.

(d) The Executive Officer or his/her designee may affirm, modify or dismiss the citation, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued.

(e) If the citation is dismissed, the request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p.

1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.5. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer or his/her designee in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation or order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation within the time allowed or pay the fine that is imposed, if one was, shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay a fine that is imposed is unprofessional conduct and may result in disciplinary action being taken by the board.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.6. Notification to Other Boards and Agencies.

The issuance and disposition of a citation shall be reported to other chiropractic boards and other regulatory agencies. A licensee's compliance with an order of abatement or payment of a fine based on the finding of a violation may only be disclosed to the public as satisfactory resolution of the matter.

NOTE: Authority cited: Sections 125.9, 1000-4(b), and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

THE FOLLOWING PROPOSED LANGUAGE WAS APPROVED BY THE
ENFORCEMENT COMMITTEE ON JANUARY 10, 2008

PROPOSED REGULATION RE LETTER OF ADMONISHMENT

§ 389. Letter of Admonishment.

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated.
- (c) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
 - (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
 - (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.
 - (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
 - (C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).
 - (D) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
 - (E) Judicial review of the decision may be obtained by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified United States mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

- (2) Comply with the letter of admonishment and submit a written corrective action plan to the Executive Officer documenting compliance.
- (3) The letter of admonishment shall be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.
- (d) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.
- (e) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:
 - (1) Issue a citation pursuant to Section 390 California Code of Regulations.
 - (2) Institute disciplinary proceedings pursuant to Section 10 of the Act.

DRAFT

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****March 27, 2008****400 R Street, Room 101
Sacramento, CA 95814****Board Members Present**

Frederick Lerner, DC., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst
Lavella Matthews, Associate Government Program Analyst
Rebecca Rust, Staff Services Analyst
April Alameda, Staff Services Analyst
Julianne Vernon, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 10:08 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Adjourn to Closed Session

Dr. Lerner adjourned to Closed Session at 10:10 a.m.

Public Meeting Call to Order

Dr. Lerner called the public session to order at 11:05 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Announcement of Closed Session Decisions

Dr. Lerner announced that the Board discussed a disciplinary case and that the Board did not entertain any motions.

Chair's Report

Dr. Lerner discussed his positive meetings with key Legislators and Anne Searcy, Department of Industrial Relations.

Dr. Lerner thanked the California Chiropractic Association (CCA), International Chiropractic Association of California (ICAC), and Southern California of University of Health Sciences for supporting AB 450 (Emmerson) and attending the recent legislative committee hearing.

Dr. Lerner made the following committee assignments and requests:

- Continuing Education: Dr. Tyler, Chair, and Dr. Lubkin. Dr. Lerner requested that the committee consider the proposal to increase education hours; recommend regulations for on-line education; potential reciprocity with the Federation of Chiropractic Licensing Board for nationally based providers; consider options to the current 8 hours didactic and 4 hours technique.
- Enforcement Committee: Dr. Lubkin, Chair and Judge Duvaras. Dr. Lerner requested that the committee continue work on developing procedures and regulations to increase vigilance and early detection. Also, continue to develop the expert witness policies and adopt regulations for cite and fine and letter of admonishment.
- Government Relations: Mr. Conran, Chair and Dr. Lubkin. Dr. Lerner asked the committee to address the concerns of the Sunset Review Report and work with staff on developing timely responses to the Bureau of State Audit's report.
- Regulations/Legislation: Dr. Lerner, Chair and Dr. Columbu. Dr. Lerner requested that the committee work closely with the Governor and Legislature on legislation pertaining to chiropractic.
- Licensing Committee: Judge Duvaras, Chair and Dr. Tyler.
- Public Relations Committee: Dr. Lerner, Chair and Mr. Conran. Dr. Lerner envisions the committee will develop a newsletter, press releases, articles, and consumer education brochures. Dr. Lerner also wants the committee to develop a seal.
- Scope of Practice Committee: Dr. Lubkin, Chair and Dr. Lerner. The committee will continue

working on Manipulation Under Anesthesia regulations, the petition to change the scope of practice issues, x-ray issue, the x-ray's, develop a mechanism to address scope of practice opinions and interpretations.

- Strategic Planning Committee: Dr. Tyler, Chair, and Dr. Columbu. Dr. Lerner expressed the importance of the committee in developing a strategic plan.

BCE Staff Recognition

Dr. Lerner publicly recognized all BCE staff members for their work over the past several months with certificates of appreciation. The following staff members were recognized: Julianne Vernon, Genie Mitsuhashi, Beckie Rust, April Alameda, Marlene Valencia, and Lavella Matthews.

Approval of Minutes

January 10, 2008, public session.

JUDGE DUVARAS MOVED TO APPROVE THE JANUARY 10, 2008 MINUTES. DR. TYLER SECONDED THE MOTION. VOTE 6-0. MOTION CARRIED.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.

Ms. Powell distributed the 2008 Bagley-Keene Open Meetings Act manual and she summarized the changes. Ms. Powell recommended that board members review the manual before each board meeting and contact her with any questions.

Ms. Powell explained the definition of serial meetings and how to avoid them. Ms. Powell informed the board members that each agenda will include all pending regulations to ensure the board with public participation can address an unexpected issue.

Ms. Powell explained that policy issues and general issues cannot be discussed in closed session. Closed session discussions must be limited to the closed session agenda.

Executive Officer's Report

Mr. Stiger discussed the status of the budget and the need to continue saving funds until the budget is restored. Mr. Conran asked if Mr. Stiger had a plan on hiring staff. Mr. Stiger stated he will begin recruiting for enforcement positions first and then move to licensing and administrative support.

Ms. Valencia presented licensing statistics to the Board and explained the licensing report.

Ms. Matthews presented enforcement statistics and explained both charts to the Board. Judge Duvaras asked how successful is the Board in recovering cost recovery. Mr. Stiger stated the Board is moderately successful and looking for ways to improve. Dr. Lubkin asked about the increase in section 312 violations. Mr. Stiger stated this speaks to licensees who are delinquent in renewing their licenses on time.

NBCE Delegate Selection – Information only

Dr. Lerner selected Dr. Lubkin as the delegate and Dr. Lerner as the alternate.

Citation and Fine language

Mr. Stiger stated that on January 10, 2008, the Enforcement Committee voted to recommend that the full Board approve the proposed regulatory language for cite and fine.

Mr. Conran expressed concerns that citations not be used unfairly to punish licensees and suggests that the Enforcement Committee review the program in six months to determine its value. Dr. Lubkin as the Enforcement Committee Chair agreed to this review

Mr. Bill Howe, CCA, spoke in support.

MR. CONRAN MOVED TO ADOPT THE CITE AND FINE LANGUAGE. DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: Mr. Conran asked how the fines will be determined. Ms. Powell answered that the fine limits are held in statute.

Mr. Conran asked if the Enforcement Committee will be reviewing the program to include guidance to the Executive Officer to determine the fine amounts. Dr. Lubkin stated the purpose of the regulation is to provide the Executive Officer with enforcement tool to use at his discretion to enforce the law.

Dr. Charles Davis, ICAC, spoke in support of the regulation and revisiting the program in six months to assess the effectiveness.

Bill Howe, CCA, spoke in support of the proposal.

VOTE: 6-0. MOTION CARRIED.

DR. LUBKIN MOVED TO DIRECT STAFF TO RESEARCH BUSINESS AND PROFESSIONS CODE 125.9 AND UNLESS THE STATUTE PROHIBITS THE BOARD FROM RENEWING A LICENSE IF THE FINE IS STILL OWING – IF THAT IS NOT IN 125.9, THAT LANGUAGE WILL BE PLACED IN THESE PROPOSED REGULATIONS BEFORE BEING NOTICED TO THE PUBLIC. MR. CONRAN SECONDED.

DISCUSSION: None

VOTE 6-0.

MOTION CARRIED.

Letter of Admonishment

MR. CONRAN MOVED TO APPROVE THE LANGUAGE.

DR. TYLER SECONDED THE MOTION.

DISCUSSION: Dr. Davis asked how citations and the letter of admonishment would be

disclosed. Ms. Powell stated citations and the letter of admonishment are not considered discipline of the license but would be disclosed to the public on a public records request.

VOTE 6-0. MOTION CARRIED.

Bureau of State Audits Report

Dr. Lerner thanked the BSA on the completion of the audit and stated the Board began working and correcting the deficiencies before the audit was released. Dr. Lerner stated this is a new day for the BCE and we will use the audit's findings as a road map to correct the past problems.

COMMITTEE REPORTS

Legislative Committee:

Dr. Lubkin announced that the committee voted to recommend a support position on AB 450 and AB 1861. The committee voted to recommend a watch position on AB 1402 pending the outcome of anticipated amendments.

JUDGE DUVARAS MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATIONS. DR. TYLER SECONDED THE MOTION.

DISCUSSION: None.

VOTE 6-0. MOTION CARRIED.

Enforcement Committee:

Dr. Lubkin announced that the committee reviewed the revised Expert Witness guidelines developed by the working group.

Dr. Lubkin stated that the committee referred the issue of chiropractic use of radiology to staff and legal counsel for review and research.

Dr. Lubkin announced that the committee voted to recommend approval of establishing permanent special investigators who are civil servants.

DR. LUBKIN MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATION TO ESTABLISH SPECIAL INVESTIGATORS AND AUTHORIZE THE EXECUTIVE OFFICER TO MOVE FORWARD.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Mr. Conran emphasized the one purpose for moving forward with this proposal transition from private investigators to civil servants.

Judge Duvaras asked if this classification required a civil service employee. Mr. Stiger answered in the affirmative.

Dr. Davis, ICAC, asked how long it would take to remove permanent employees. Ms. Powell explained the progressive discipline process including the probationary process.

Bill Howe, CCA, spoke in support of the proposal.

VOTE 6-0.

MOTION CARRIED.

Manipulation Under Anesthesia (MUA)

Dr. Lerner announced that the committee voted to recommend adoption of the proposed regulatory language for MUA.

DR. LUBKIN MOVED TO ADOPT THE RECOMMENDATION OF THE COMMITTEE.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Judge Duvaras recommended that the patient complete and submit an informed consent prior to the procedure taking place. Ms. Powell agreed that it is important to distinguish the responsibilities of the chiropractor from the physician and surgeon.

DR. LUBKIN MOVED TO AMEND HIS ORIGINAL MOTION TO ADOPT THE LANGUAGE WITH THE ADDITION OF A REQUIREMENT OF THE CHIROPRACTIC DOCTOR TO RECEIVE A SIGNED WRITTEN INFORMED CONSENT FROM THE PATIENT OUTLINING THE RISK FACTORS OF THE PROCEDURE.

DISCUSSION: Judge Duvaras asked why the procedure requires two chiropractors. Dr. Lerner explained that the procedure requires two chiropractors to ensure safety. The second chiropractor assists with moving the patient and some manipulation procedures require both chiropractors.

Dr. Davis, ITC, reiterated that his suggested language be included in the proposed regulatory language.

Kristine Schultz, California Chiropractic Association, recommended a technical correction to use the term doctor of chiropractic for all chiropractic regulations.

Kathleen Creason, on behalf of the Osteopathic Physicians & Surgeons of California, opposes the proposed MUA regulations.

Dr. Tyler objected and disagreed with Ms. Creason's comments.

Mr. Conran voiced his concern for the brevity of the proposed language. Mr. Conran would have preferred more details since he is not a chiropractor.

DR. LUBKIN WITHDREW HIS AMENDED MOTION.

DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH THE PROPOSED REGULATOR LANGUAGE FOR MUA IN THE BOARD PACKET AND INCLUDE THE LANGUAGE PROVIDED BY DR. CHARLES DAVIS ON THE TYPE OF FACILITY AND LEGAL COUNSEL WILL INSERT THE PROPER REFERENCES OF THE HEALTH AND SAFETY CODE AND A PROVISION REQUIRING A WRITTEN CONSENT FROM THE PATIENT OUTLINING THE RISKS OF THE PROCEDURE PRIOR TO THE PROCEDURE BEING PERFORMED.

DR. LERNER SECONDED THE MOTION.

DISCUSSION: None

VOTE 5-0-1

MOTION CARRIED

Administrative Committee

Mr. Conran announced that the committee adopted the following recommendations:

- The Executive Officer pursue a multi-year contract with the Department of Consumer Affairs for administrative, legal, and personnel and other support services.
- Board Members receive state-issued e-mail addresses to conduct Board business.
- Revise the Board Member Administrative Manual to reflect the new officers, the standing committees, update citation of B&P Code section 453.

Mr. Conran announced that the Executive Officer terminated the contracts for two investigators after learning they were not licensed by the State of California.

MR. CONRAN MOVED THAT THE BOARD ACCEPT THE ADMINISTRATIVE COMMITTEE RECOMMENDATIONS.

DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: None

VOTE 6-0

MOTION CARRIED.

Announcements

Next Board meeting is scheduled for May 22, 2008 in Sacramento.

Public Comment

Dr. Clum, Life Chiropractic College West, recommended that the enforcement information be further broken down to be more meaningful to the public and to students entering the profession.

Debra Snow expressed her positive feedback on the Board's progress and hopes the Board embraces reform efforts and improvement in accountability to the public.

Bill Howe, California Chiropractic Association, praised the Board and staff for the recent efforts over the past year given the resource shortage.

Future Agenda Items

Judge Duvaras requests the resetting of the time and location of the July and September Board meetings. He expressed concern about the expense of overnight travel and the movement of documents.

Dr. Lerner requests the Scope of Practice Committee take up the issue of chiropractic specialties.

Dr. Charles Davis, International Chiropractic Association of California, requested progress updates on the audit recommendations, chiropractic x-ray, and chiropractic specialties.

Adjournment:

Dr. Lerner adjourned the meeting at 12:27 p.m.

Board of Chiropractic Examiners

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**NOTICE OF BOARD MEETING – CORRECTED COPY****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 27, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update

Government Relations Committee - Discussion and Possible Action

- Status of Implementing the March 25, 2008, Bureau of State Audits' Recommendations and 60 Status Report
- Board Member Use of State Issued E-Mail Accounts

Public Relations Committee – Discussion and Possible Action

- Contract with the Department of Consumer Affairs for Public Relations Services

Legislative Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Legislative Committee Agenda.

Strategic Planning Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Strategic Planning Committee Agenda.

REGULATIONS UPDATE – Discussion and Possible Action

- Cite and Fine
- Letter of Admonishment
- Manipulation Under Anesthesia

Board Meeting Schedule for 2008 – Discussion and Possible Action

Public Comment

Future Agenda Items

CLOSED SESSION:

Discussion on Pending Litigation

Pursuant to California Government Code Section 11126(e)

- ***David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes***
Sacramento County Superior Court, Case No. 07AS03721
- ***Catherine Hayes v. Board of Chiropractic Examiners***
Department of Fair Employment and Housing and Department of Industrial Relations Complaint

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126(c)(3)

OPEN SESSION: Announcements re Closed Session

Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF BOARD MEETING – CORRECTED COPY****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 27, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update

Government Relations Committee - Discussion and Possible Action

- Status of Implementing the March 25, 2008, Bureau of State Audits' Recommendations and 60 Status Report
- Board Member Use of State Issued E-Mail Accounts

Public Relations Committee – Discussion and Possible Action

- Contract with the Department of Consumer Affairs for Public Relations Services

Legislative Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Legislative Committee Agenda.

Strategic Planning Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Strategic Planning Committee Agenda.

REGULATIONS UPDATE – Discussion and Possible Action

- Cite and Fine
- Letter of Admonishment
- Manipulation Under Anesthesia

Board Meeting Schedule for 2008 – Discussion and Possible Action

Public Comment

Future Agenda Items

CLOSED SESSION:

Discussion on Pending Litigation

Pursuant to California Government Code Section 11126(e)

- ***David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes***
Sacramento County Superior Court, Case No. 07AS03721
- ***Catherine Hayes v. Board of Chiropractic Examiners***
Department of Fair Employment and Housing and Department of Industrial Relations Complaint

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126(c)(3)

OPEN SESSION: Announcements re Closed Session

Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

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Sacramento, California 95833-2931
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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****March 27, 2008****400 R Street, Room 101
Sacramento, CA 95814****Board Members Present**

Frederick Lerner, DC., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst
Lavella Matthews, Associate Government Program Analyst
Rebecca Rust, Staff Services Analyst
April Alameda, Staff Services Analyst
Julianne Vernon, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 10:08 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Adjourn to Closed Session

Dr. Lerner adjourned to Closed Session at 10:10 a.m.

Public Meeting Call to Order

Dr. Lerner called the public session to order at 11:05 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Announcement of Closed Session Decisions

Dr. Lerner announced that the Board discussed a disciplinary case and that the Board did not entertain any motions.

Chair's Report

Dr. Lerner discussed his positive meetings with key Legislators and Anne Searcy, Department of Industrial Relations.

Dr. Lerner thanked the California Chiropractic Association (CCA), International Chiropractic Association of California (ICAC), and Southern California University of Health Sciences for supporting AB 450 (Emmerson) and attending the recent legislative committee hearing.

Dr. Lerner made the following committee assignments and requests:

- **Continuing Education:** Dr. Tyler, Chair and Dr. Lubkin. Dr. Lerner requested that the committee consider the proposal to increase education hours; recommend regulations for on-line education; potential reciprocity with the Federation of Chiropractic Licensing Board for nationally based providers; consider options to the current 8 hours didactic and 4 hours technique.
- **Enforcement Committee:** Dr. Lubkin, Chair and Judge Duvaras. Dr. Lerner requested that the committee continue work on developing procedures and regulations to increase vigilance and early detection. Also continue to develop the expert witness polices and adopt regulations for cite and fine and letter of admonishment.
- **Government Relations:** Mr. Conran, Chair and Dr. Lubkin. Dr. Lerner asked the committee to address the concerns of the Sunset Review Report and work with staff on developing timely responses to the Bureau of State Audit's report.
- **Regulations/Legislation:** Dr. Lerner, Chair and Dr. Columbu. Dr. Lerner requested that the committee work closely with the Governor and Legislature on legislation pertaining to chiropractic.
- **Licensing Committee:** Judge Duvaras, Chair and Dr. Tyler.
- **Public Relations Committee:** Dr. Lerner, Chair and Mr. Conran. Dr. Lerner envisions the committee will develop a newsletter, press releases, articles, and consumer education brochures. Dr. Lerner also wants the committee to develop a seal.

- Scope of Practice Committee: Dr. Lubkin, Chair and Dr. Lerner. The committee will continue working on Manipulation Under Anesthesia regulations, the petition to change the scope of practice issues, x-ray issue, the x-ray's, develop a mechanism to address scope of practice opinions and interpretations.
- Strategic Planning Committee: Dr. Tyler, Chair, and Dr. Columbu. Dr. Lerner expressed the importance of the committee in developing a strategic plan.

BCE Staff Recognition

Dr. Lerner publicly recognized all BCE staff members for their work over the past several months with certificates of appreciation. The following staff members were recognized: Julianne Vernon, Genie Mitsuvara, Beckie Rust, April Alameda, Marlene Valencia, and Lavella Matthews.

Approval of Minutes

January 10, 2008, public session.

JUDGE DUVARAS MOVED TO APPROVE THE JANUARY 10, 2008 MINUTES. DR. TYLER SECONDED THE MOTION. VOTE 6-0. MOTION CARRIED.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.

Ms. Powell distributed the 2008 Bagley-Keene Open Meetings Act manual and she summarized the changes. Ms. Powell recommended that board members review the manual before each board meeting and contact her with any questions.

Ms. Powell explained the definition of serial meetings and how to avoid them. Ms. Powell informed the board members that each agenda will include all pending regulations to ensure the board with public participation can address an unexpected issue.

Ms. Powell explained that policy issues and general issues cannot be discussed in closed session. Closed session discussions must be limited to the closed session agenda.

Executive Officer's Report

Mr. Stiger discussed the status of the budget and the need to continue saving funds until the budget is restored. Mr. Conran asked if Mr. Stiger had a plan on hiring staff. Mr. Stiger stated he will begin recruiting for enforcement positions first and then move to licensing and administrative support.

Ms. Valencia presented licensing statistics to the Board and explained the licensing report.

Ms. Matthews presented enforcement statistics and explained both charts to the Board. Judge Duvaras asked how successful is the Board in recovering cost recovery. Mr. Stiger stated the Board is moderately successful and looking for ways to improve. Dr. Lubkin asked about the increase in section 312 violations. Mr. Stiger stated this speaks to licensees who are delinquent in renewing their licenses on time.

NBCE Delegate Selection – Information only

Dr. Lerner selected Dr. Lubkin as the delegate and Dr. Lerner as the alternate.

Citation and Fine language

Mr. Stiger stated that on January 10, 2008, the Enforcement Committee voted to recommend that the full Board approve the proposed regulatory language for cite and fine.

Mr. Conran expressed concerns that citations not be used unfairly to punish licensees and suggests that the Enforcement Committee review the program in six months to determine its value. Dr. Lubkin as the Enforcement Committee Chair agreed to this review.

Mr. Bill Howe, CCA, spoke in support.

MR. CONRAN MOVED TO ADOPT THE CITE AND FINE LANGUAGE. DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: Mr. Conran asked how the fines will be determined. Ms. Powell answered that the fine limits are held in statute.

Mr. Conran asked if the Enforcement Committee will be reviewing the program to include guidance to the Executive Officer to determine the fine amounts. Dr. Lubkin stated the purpose of the regulation is to provide the Executive Officer with enforcement tool to use at his discretion to enforce the law.

Dr. Charles Davis, ICAC, spoke in support of the regulation and revisiting the program in six months to assess the effectiveness.

Bill Howe, CCA, spoke in support of the proposal.

VOTE: 6-0. MOTION CARRIED.

DR. LUBKIN MOVED TO DIRECT STAFF TO RESEARCH BUSINESS AND PROFESSIONS CODE 125.9 AND UNLESS THE STATUTE PROHIBITS THE BOARD FROM RENEWING A LICENSE IF THE FINE IS STILL OWING – IF THAT IS NOT IN 125.9, THAT LANGUAGE WILL BE PLACED IN THESE PROPOSED REGULATIONS BEFORE BEING NOTICED TO THE PUBLIC. MR. CONRAN SECONDED.

DISCUSSION: None

VOTE 6-0.

MOTION CARRIED.

Letter of Admonishment

MR. CONRAN MOVED TO APPROVE THE LANGUAGE.

DR. TYLER SECONDED THE MOTION.

DISCUSSION: Dr. Davis asked how citations and the letter of admonishment would be disclosed. Ms. Powell stated citations and the letter of admonishment are not considered discipline of the license but would be disclosed to the public on a public records request.

VOTE 6-0. MOTION CARRIED.

Bureau of State Audits Report

Dr. Lerner thanked the BSA on the completion of the audit and stated the Board began working and correcting the deficiencies before the audit was released. Dr. Lerner stated this is a new day for the BCE and we will use the audit's findings as a road map to correct the past problems.

COMMITTEE REPORTS

Legislative Committee:

Dr. Lubkin announced that the committee voted to recommend a support position on AB 450 and AB 1861. The committee voted to recommend a watch position on AB 1402 pending the outcome of anticipated amendments.

JUDGE DUVARAS MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATIONS. DR. TYLER SECONDED THE MOTION.

DISCUSSION: None

VOTE 6-0. MOTION CARRIED.

Enforcement Committee:

Dr. Lubkin announced that the committee reviewed the revised Expert Witness guidelines developed by the working group.

Dr. Lubkin stated that the committee referred the issue of chiropractic use of radiology to staff and legal counsel for review and research.

Dr. Lubkin announced that the committee voted to recommend approval of establishing permanent special investigators who are civil servants.

DR. LUBKIN MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATION TO ESTABLISH SPECIAL INVESTIGATORS AND AUTHORIZE THE EXECUTIVE OFFICER TO MOVE FORWARD.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Mr. Conran emphasized the one purpose for moving forward with this proposal transition from private investigators to civil servants.

Judge Duvaras asked if this classification required a civil service employee. Mr. Stiger answered in the affirmative.

Dr. Davis, ICAC, asked how long it would take to remove permanent employees. Ms. Powell explained the progressive discipline process including the probationary process.

Bill Howe, CCA, spoke in support if the proposal.

VOTE 6-0.

MOTION CARRIED.

Manipulation Under Anesthesia (MUA)

Dr. Lerner announced that the committee voted to recommend adoption of the proposed regulatory language for MUA.

DR. LUBKIN MOVED TO ADOPT THE RECOMMENDATION OF THE COMMITTEE.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Judge Duvaras recommended that the patient complete and submit an informed consent prior to the procedure taking place. Ms. Powell agreed that it is important to distinguish the responsibilities of the chiropractor from the physician and surgeon.

DR. LUBKIN MOVED TO AMEND HIS ORIGINAL MOTION TO ADOPT THE LANGUAGE WITH THE ADDITION OF A REQUIREMENT OF THE CHIROPRACTIC DOCTOR TO RECEIVE A SIGNED WRITTEN INFORMED CONSENT FROM THE PATIENT OUTLINING THE RISK FACTORS OF THE PROCEDURE.

DISCUSSION: Judge Duvaras asked why the procedure requires two chiropractors. Dr. Lerner explained that the procedure requires two chiropractors to ensure safety. The second chiropractor assists with moving the patient and some manipulation procedures require both chiropractors.

Dr. Davis, ITC, reiterated that his suggested language be included in the proposed regulatory language.

Kristine Schultz, California Chiropractic Association, recommended a technical correction to use the term doctor of chiropractic for all chiropractic regulations.

Kathleen Creason, on behalf of the Osteopathic Physicians & Surgeons of California, opposes the proposed MUA regulations.

Mr. Conran voiced his concern for the brevity of the proposed language. Mr. Conran would have preferred more details since he is not a chiropractor.

DR. LUBKIN WITHDREW HIS AMENDED MOTION.

DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH THE PROPOSED REGULATOR LANGUAGE FOR MUA IN THE BOARD PACKET AND INCLUDE THE LANGUAGE PROVIDED BY DR. CHARLES DAVIS ON THE TYPE OF FACILITY AND LEGAL COUNSEL WILL INSERT THE PROPER REFERENCES OF THE HEALTH AND SAFETY CODE AND A PROVISION REQUIRING A WRITTEN CONSENT FROM THE PATIENT OUTLINING THE RISKS OF THE PROCEDURE PRIOR TO THE PROCEDURE BEING PERFORMED.

DR. LERNER SECONDED THE MOTION.

DISCUSSION: None

VOTE 5-0-1

MOTION CARRIED

Administrative Committee

Mr. Conran announced that the committee adopted the following recommendations:

- The Executive Officer pursue a multi-year contract with the Department of Consumer Affairs for administrative, legal, and personnel and other support services.
- Board Members receive state-issued e-mail addresses to conduct Board business.
- Revise the Board Member Administrative Manual to reflect the new officers, the standing committees, update citation of B&P Code section 453.

Mr. Conran announced that the Executive Officer terminated the contracts for two investigators after learning they were not licensed by the State of California.

MR. CONRAN MOVED THAT THE BOARD ACCEPT THE ADMINISTRATIVE COMMITTEE RECOMMENDATIONS.

DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: None

VOTE 6-0

MOTION CARRIED.

Announcements

Next Board meeting is scheduled for May 22, 2008 in Sacramento.

Public Comment

Dr. Clum, Life Chiropractic College West, recommended that the enforcement information be further broken down to be more meaningful to the public and to students entering the profession.

Debra Snow expressed her positive feedback on the Board's progress and hopes the Board embraces reform efforts and improvement in accountability to the public.

Bill Howe, California Chiropractic Association, praised the Board and staff for the recent efforts over the past year given the resource shortage.

Future Agenda Items

Judge Duvaras requests the resetting of the time and location of the July and September Board meetings. He expressed concern about the expense of overnight travel and the movement of documents.

Dr. Lerner requests the Scope of Practice Committee take up the issue of chiropractic specialties.

Dr. Charles Davis, International Chiropractic Association of California, requested progress updates on the audit recommendations, chiropractic x-ray, and chiropractic specialties.

Adjournment:

Dr. Lerner adjourned the meeting at 12:27 p.m.

Board of Chiropractic Examiners

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**Operating Budget for Board of Chiropractic Examiners
Fiscal Year 08/09****Governor's Proposed Budget for FY 08/09**

Appropriation: \$3,180,000
Authorized Positions: 14.9

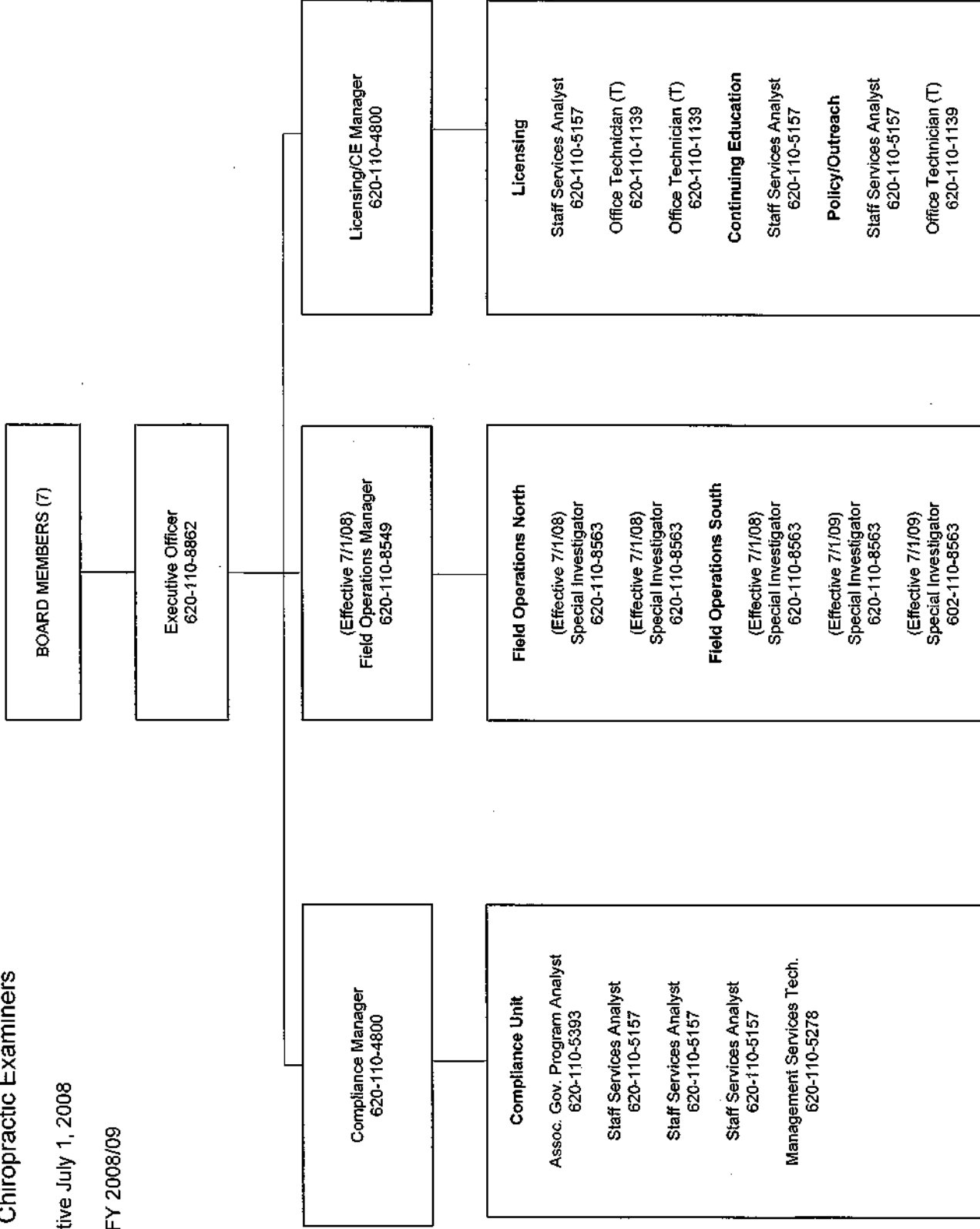
Governor's Revised Budget for FY 08/09

Appropriation: \$3,683,000
Authorized Positions: 18.9

State Board of Chiropractic Examiners

Effective July 1, 2008

FY 2008/09



Brian J. Stajda
Executive Officer

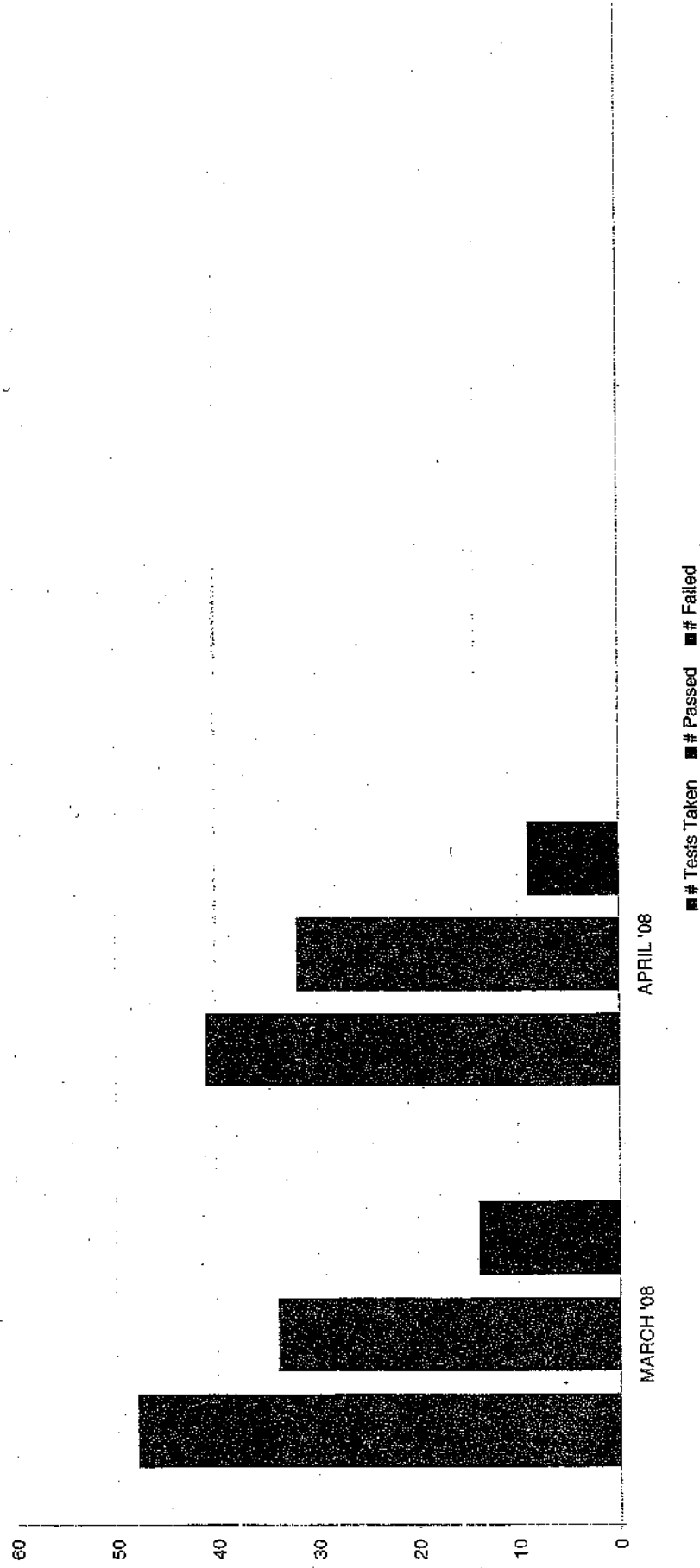
Recruitment and Selection of Vacant Position Update **May 15, 2008**

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Office Technician Cashier / Front Counter	04/11/08	Complete	Complete	Complete	05/01/08	05/05/08
Office Technician Licensing / CE	04/11/08	Complete	Complete	Complete	04/23/08	05/07/08
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete		
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete		
Staff Services Manager I Compliance Manager	04/11/08	Complete	Complete	In Process		
Staff Services Manager I Lic/CE/Admin Manager	05/05/08	In Process	In Process			
Sup. Spec. Investigator I Field Op. Manager						
Office Technician Policy / Admin						

2008 Chiropractic Law & Professional Practice Exam (CLPPE)

	# Tests Taken	# Passed	# Failed
MARCH '08	48	34	14
APRIL '08	41	32	9

*78% Needed to Pass the CLPPE



BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA
As of APRIL 1, 2008

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13842	1076	7824
SATELLITES	2287	889	4873
CORPORATIONS	1316	365	980
REFFERALS	17	15	4
TOTALS	17462	2345	13681

As of APRIL 1, 2007

LICENSE TYPE	VALID/ACTIVE	FORFEITED	CANCELLED
CHIROPRACTORS	13786	1108	7550
SATELLITES	2052	1386	3594
CORPORATIONS	1242	288	969
REFFERALS	17	15	4
TOTALS	17097	2797	12117

Violation Codes/Descriptions

The Chiropractic Initiative Act of California (ACT):

- 10 – Rules of Professional Conduct
- 15 – Noncompliance With and Violations of Act

California Code of Regulations (CCR):

- 302(a) – Scope of Practice
- 303 – Filing of Addresses
- 308 – Display of License
- 311 – Advertisements
- 312 – Illegal Practice
- 316 – Responsibility for Conduct on Premises
- 317 – Unprofessional Conduct
- 318 – Chiropractic Patient Records/Accountable Billing
- 319 – Free or Discount Services
- 355 – Renewal and Restoration
- 360 – Continuing Education Audits
- 367.5 – Application, Review of Refusal to Approve (corporations)
- 367.7 – Name of Corporation

Business and Professions Code (BP):

- 801 – Professional Reporting (malpractice settlements)
- 810 – Insurance Fraud
- 2430 – Default on Health Education Assistance Loan

Health and Safety Code (HS):

- 123110 – Patient Access to Health Records

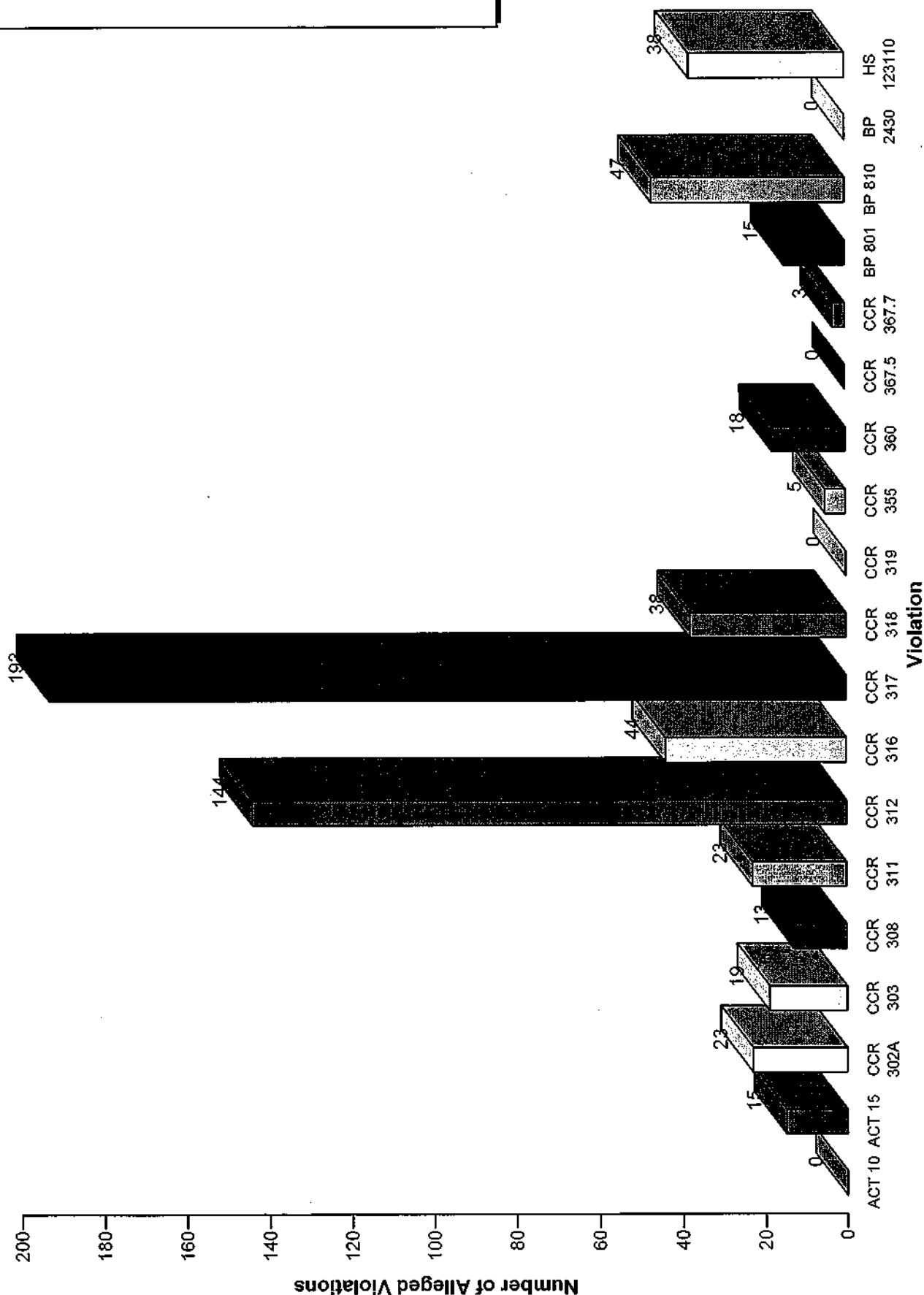
FISCAL YEAR 2008

July 1, 2007 - April 30, 2008

Total Number of Complaints Opened - 529

Total Number of Violations - 638

(A complaint may contain multiple violations)



- ACT 10
- ACT 15
- CCR 302A
- CCR 303
- CCR 308
- CCR 311
- CCR 312
- CCR 316
- CCR 317
- CCR 318
- CCR 319
- CCR 355
- CCR 360
- CCR 367.5
- CCR 367.7
- BP 801
- BP 810
- BP 2430
- HS 123110

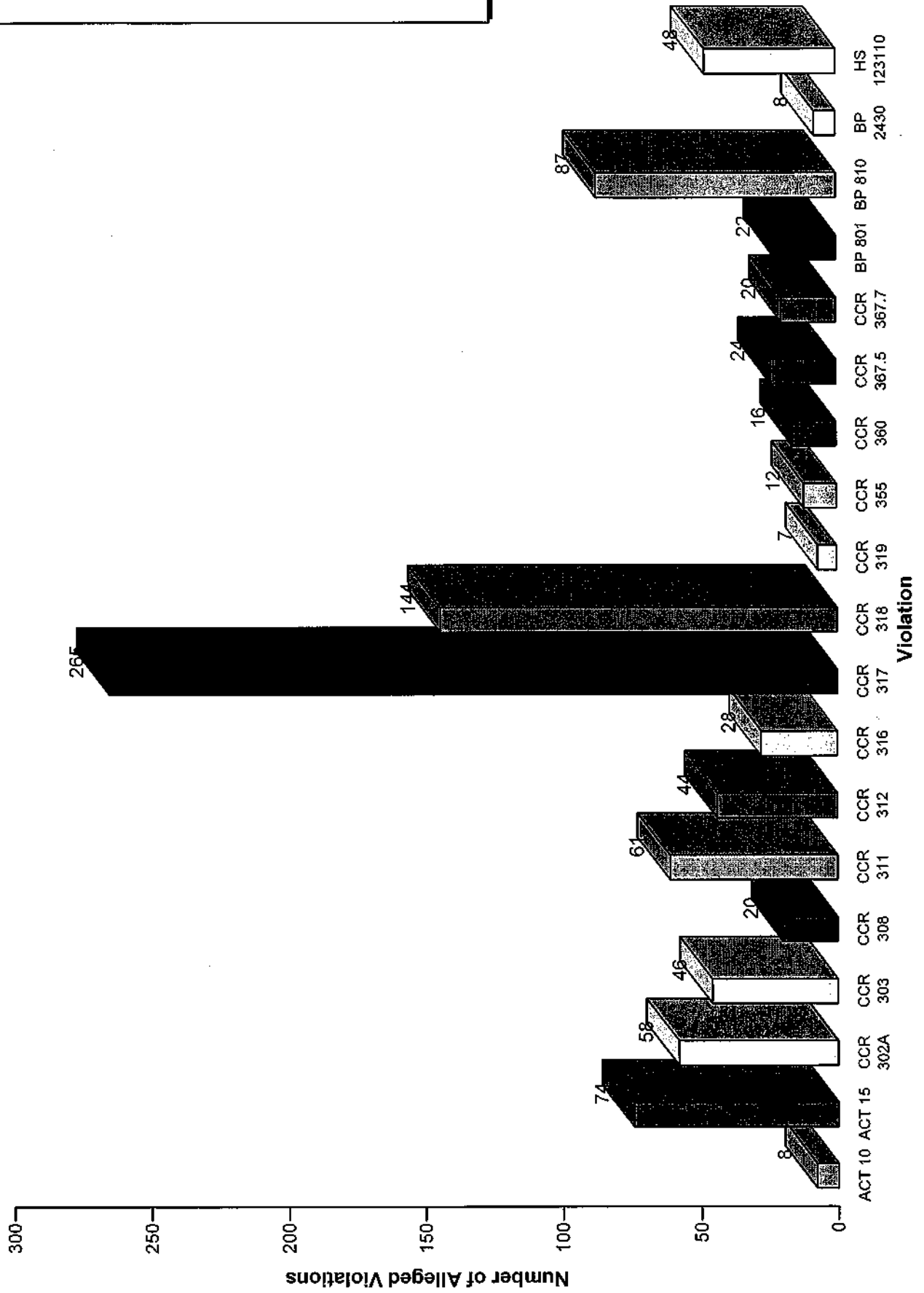
FISCAL YEAR 2007

July 1, 2006 - April 30, 2007

Total Number of Complaints Opened - 632

Total Number of Violations - 992

(A complaint may contain multiple violations)




- ACT 10
- ACT 15
- CCR 302A
- CCR 303
- CCR 308
- CCR 311
- CCR 312
- CCR 316
- CCR 317
- CCR 318
- CCR 319
- CCR 355
- CCR 360
- CCR 367.5
- CCR 367.7
- BP 801
- BP 810
- BP 2430
- HS 123110

MEMORANDUM



Date: May 15, 2008

To: Board Members

From: Brian J. Stiger, 
Executive Officer

Subject: Ratification of Formerly Approved Doctors of Chiropractic for Licensure

This is to request that the Board ratify the attached list of individuals as Doctors of Chiropractic at the May 22, 2008, public meeting.

Between July 1, 2007, and May 15, 2008, staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

If you have any questions or concerns, please contact me at your earliest opportunity.

**Approval By Ratification of Formerly Approved License Applications
As of May 15, 2008**

Name (First, Middle, Last)			Date Issued	DC#
Todd	William	Erickson	July 2, 2007	30630
Clinton	Lane	Kinnear	July 2, 2007	30631
Jeffrey	Michael	Vasey	July 3, 2007	30632
Brian	I.	Deutsch	July 5, 2007	30633
Hadi	A.	Shirzadian	July 27, 2007	30634
Lynn	Kathleen	Mabry	July 26, 2007	30635
John	Clayton	Hyght	July 26, 2007	30636
Zareena		Khan	July 26, 2007	30637
Joseph	William	Forster	July 26, 2006	30638
Dustin		Dunham	July 26, 2007	30639
Derek	Scott	Pelofsky	July 26, 2007	30640
Cler		Baheri	July 26, 2007	30641
Duane	Anthony	Gilbert	July 26, 2007	30642
Scott	Bradley	Levin	July 26, 2007	30643
Scott	Kevin	Pacheco	July 26, 2007	30644
Damon		Soraya	July 26, 2001	30645
David	Martin	Schlute	July 26, 2007	30646
Christopher	Michael	Cote	July 26, 2007	30647
Steven	Andrew	Sprague	July 26, 2007	30648
Kevin	Candido	Mercado	July 26, 2007	30649
Thanongsay		Nanthasit	August 9, 2007	30650
Ali		Kakar	August 9, 2007	30651
Lindsay	Noelle	Whitehead	August 9, 2007	30652
Jesse		Yuson	August 9, 2007	30653
Thuc	Thien	Le	August 9, 2007	30654
Cathy	Bich	Do	August 9, 2007	30655
Bruce	Barnes	Allen	August 9, 2007	30656
Rene	Louise	Nevarez	August 9, 2007	30657
Bruce	Warren	Turley	August 9, 2007	30658
Nery	Orlando	Rivas	August 9, 2007	30659
Kambiz		Yazdi	August 9, 2007	30660
Brandon	Rex	Carter	August 9, 2007	30661
Jason	Allen	Mack	August 9, 2007	30662
Tamar		Gamliel	August 9, 2007	30663
Justin	Seang	Truong	August 9, 2007	30664
Darren	John	Grozier	August 9, 2007	30665
Corado	David	Greene	August 15, 2007	30666
Craig	Harry	Diamond	August 15, 2007	30667

Robby	M	Chen	August 15, 2007	30668
Wonil		Yoon	August 15, 2007	30669
Robert	Patrick	Chance	August 15, 2007	30670
James		Bedle	August 15, 2007	30671
Renee	Ramos	Francisco	August 15, 2007	30672
Eric	Lawrence	St. Pierre	August 15, 2007	30673
Brigit	Ann	Holland	August 15, 2007	30674
Amy	Ryanne	Rubio	August 15, 2007	30675
Jeffrey	Robinson	Kwan	August 15, 2007	30676
Genevieve		John	August 15, 2007	30677
Marino	Victor	Scafidi	August 15, 2007	30678
Thomas	Shawn	Halyk	August 15, 2007	30679
Myron	Jamal	Butts	August 15, 2007	30680
Nona		Djavid	August 23, 2007	30681
Alen		Heshmat	August 23, 2007	30682
Sterling	Morokath	Hang	August 23, 2007	30683
Deborah	Virgina	Runyan	August 23, 2007	30684
Harry	Kalaolaokalani	Eulitt	August 23, 2007	30685
John	Coleman	Richardson	August 23, 2007	30686
Andrew	Paul	Mairs	August 27, 2007	30687
Chad	Ryan	Barylski	August 27, 2007	30688
Brandon	Hien Duc Huynh	Nguyen	August 27, 2007	30689
Erik	Stephen	Vose	August 27, 2007	30690
Melineh	Melanie	Gregorian	August 27, 2007	30691
Janelle		Dong	August 27, 2007	30692
Harma		Mirzakhanian	August 27, 2007	30693
Megan	Elizabeth	Bandish Shirley	August 27, 2007	30694
Ghislaine		Rodriguez	August 27, 2007	30695
Daniel	Thomas	Cocks	August 27, 2007	30696
Amy	Lauren	Kolesiak	August 27, 2007	30697
Adolfo	Albert Chi Hung	Liu	August 29, 2007	30698
Raymon	Tyler	Johnson	August 29, 2007	30699
Sharon	Payne	Ayers	August 30, 2007	30700
Richard	Arnold	Wright	August 30, 2007	30701
Hyun Chul		Kim	August 31, 2007	30702
Joseph	Patrick	Chapon	September 5, 2007	30703
John	Michael	Casci	September 5, 2007	30704
Chun Keung		Mak	September 5, 2007	30705
Melissa	Anne	Nagare	September 6, 2007	30706
Johannes	Fernandez	Garrido	September 6, 2007	30707
Kevin	Matthew	Shirley	September 10, 2007	30708
May Christie	Flores	Anselmo	September 10, 2007	30709
Paul	Gregory	Lyell	September 10, 2007	30710

Matthew	Eron	Howe	September 11, 2007	30711
Daniel	David	Roney	September 12, 2007	30712
Steven	Richard	Kilbas	September 13, 2007	30713
Freda	Marie	Baham	September 14, 2007	30714
Wendy	S.	Norman	September 14, 2007	30715
Alex	B.	Lanning	September 18, 2007	30716
Alex	Marcel	Rodriguez	September 18, 2007	30717
Vu	Anh	Tran	September 18, 2007	30718
Lawrence	Hartley	Zlot	September 18, 2007	30719
Paulo		Villanueva	September 18, 2007	30720
Larry	Schow	Masula	September 18, 2007	30721
Liriam		Ramirez-Ortiz	September 18, 2007	30722
Daniel	Lucas Ryan	Murrish	September 21, 2007	30723
Jarret	Lee	Welsh	September 21, 2007	30724
Kathy	My	Nguyen	September 25, 2007	30725
Ryan	Robert	Swink	September 25, 2007	30726
Mya	Insuk	Cho	September 25, 2007	30727
Randall	George	Toal	September 25, 2007	30728
Michelle	C.	Goldych	September 28, 2007	30729
Thomas	Patrick	Smith III	October 1, 2007	30730
Jamie	Victoria	Bones	October 2, 2007	30731
Morgan	Duvall	Young	October 2, 2007	30732
Michelle	Rae	Naber	October 2, 2007	30733
Matthew	Joel	Singer	October 2, 2007	30734
Madjid		Zeinal	October 3, 2007	30735
Lindsay	Margret	Weber	October 5, 2007	30736
Nathan	Phong	Nghe	October 5, 2007	30737
Justin	David	Vickroy	October 10, 2007	30738
Jacqueline	S.	Connolly	October 10, 2007	30739
Lana	Elizabeth	Montes	October 10, 2007	30740
Michelann	Genevieve	Michelena	October 11, 2007	30741
Christian	H.	Mendoza	October 12, 2007	30742
Pia		Martin	October 16, 2007	30743
Wayne	P.	Choy	October 16, 2007	30744
Brent	J.	Hollowell	October 18, 2007	30745
Kara	Marie	Waltz	October 19, 2007	30746
Nicholas	Adam	Porterfield	October 22, 2007	30747
Jane	Roldan	Simbre	October 22, 2007	30748
Kim	Byum	Suk	October 22, 2007	30749
Hong	Kenneth	Hyun	October 22, 2007	30750
Vahan		Avetisyan	October 23, 2007	30751
Alan	Ning	Xu	October 23, 2007	30752
Jane	Jihye	Kim	October 23, 2007	30753

Courtney	Anne	Bostjancic	October 25, 2007	30754
Paul	E.	Dancy Jr.	October 29, 2007	30755
Ji Hoon		Kim	October 29, 2007	30756
Joseph	James	Reid	October 29, 2007	30757
Margaret	Koszyklo	Smith	October 30, 2007	30758
Yuko		Yamamoto	October 30, 2007	30759
Tyson	M.	Perez	October 30, 2007	30760
Janna	Renee	Huboi	November 5, 2007	30761
Lara	R.	Kossover	November 5, 2007	30762
Steven	Clark	Hobbs	November 6, 2007	30763
Lauren	Marieange	Jalette	November 6, 2007	30764
Joanna	Helen	McCully	November 8, 2007	30765
Goldberry	Skeel	Jacques-Maynes	November 9, 2007	30766
Nicholas	John	Froehling	November 14, 2007	30767
Reggie	Stanley	Fuller	November 14, 2007	30768
Jason	L.	Rabineau	November 14, 2007	30769
Cassandra	Maria	Mason	November 16, 2007	30770
Brooke	Allison	Sherman	November 16, 2007	30771
Harris	Kwok-Ching	Lee	November 20, 2007	30772
Michael	Christopher	Murray	November 20, 2007	30773
Michael	Joseph	Sobran	November 26, 2007	30774
Mi Sun		Yi	November 26, 2007	30775
Hyun	Jip	Kim	November 26, 2007	30776
Jamie	Christian	Kaszer	November 26, 2007	30777
Daryl	Wayne	Hobbs	November 29, 2007	30778
Dana	Elizabeth	Barry	December 4, 2007	30779
Qudsia		Sadiq	December 4, 2007	30780
Andrea	Michele	Aldrich	December 4, 2007	30781
Brett	Alexander	Smith	December 4, 2007	30782
Gary	Wade	Nolan	December 6, 2007	30783
Payam		Pirnia	December 6, 2007	30784
Nicole	Freeman	Watson	December 6, 2007	30785
Rachel	Dawn	Robison	December 11, 2007	30786
David	Richard	Olsen	December 12, 2007	30787
David	Allen	McCann	December 18, 2007	30788
Anna	Louise	Rossi	December 18, 2007	30789
Timothy	Joseph	Williams	December 26, 2007	30790
Kenny	Yu-Yun	Huang	December 26, 2007	30791
Jimmy		Chu	December 26, 2007	30792
Shilpa		Agrawal	December 24, 2007	30793
Robert	Neil	Privratsky Jr.	January 3, 2008	30794
Kayla	Louise	Biewer	January 14, 2008	30795
Daniel	S.	Chun	January 14, 2008	30796

Yolanda	Eva	Dabrowski	January 14, 2008	30797
Patricia	Lee	Gorman	January 14, 2008	30798
Parastou		Ilbeigi	January 14, 2008	30799
Joseph	Paul	Russell	January 14, 2008	30800
Manuel	Ernesto	Valle	January 14, 2008	30801
Lawrence	Coleman	Williams	January 14, 2008	30802
Steven	Phillip	Bennett	February 1, 2008	30803
Charalampos		Bilitsis	February 1, 2008	30804
Brandon	David	Fox	February 1, 2008	30805
Jonathan	Barret	Herbert	February 1, 2008	30806
Kaela	Son-Ah	Hwang	February 1, 2008	30807
Anthony	Wayne	Kearns	February 1, 2008	30808
Phillip	David	Kotzan	February 1, 2008	30809
Kesung		Kwak	February 1, 2008	30810
Glenn	R.	Larson	February 1, 2008	30811
Robinson	Thanh	Le	February 1, 2008	30812
Sna		Lim	February 1, 2008	30813
Joseline		Nguyen	February 1, 2008	30814
Rosanna	Rochelle	Perez	February 1, 2008	30815
Jordan	Jeffrey	Savara	February 1, 2008	30816
Jack		Trapasso	February 1, 2008	30817
Jack	Quoc	Truong	February 1, 2008	30818
John	Taylor	White	February 1, 2008	30819
Nami	Neil	Hai	February 4, 2008	30820
Gilbert	Sami	Abou Jaoudeh	February 21, 2008	30821
Hamed	Johnathan	Aflakian	February 21, 2008	30822
Aaron	Christopher	Bates	February 21, 2008	30823
Sandy	Allen	Bell	February 21, 2008	30824
Robert	Douglass	Benaderet	February 21, 2008	30825
Laura	Lynn	Bohlken	February 21, 2008	30826
Kurt	Michael	Bryant	February 21, 2008	30827
Thai	Binh	Bui	February 21, 2008	30828
Michael	Adam	Dyer	February 21, 2008	30829
Eddie	R	Fernandes	February 21, 2008	30830
Tyler	Tedd	Gatteau	February 21, 2008	30831
Gabriel	Seth	Goldman	February 21, 2008	30832
Rudolph	Andrew	Gutierrez Jr.	February 21, 2008	30833
Scott	Steven	Hardman	February 21, 2008	30834
Tetsuya		Hasegawa	February 21, 2008	30835
Mimi	C	Jackson	February 21, 2008	30836
Carolyn	J.	Jacobson	February 21, 2008	30837
Salvadore		Kerkar	February 21, 2008	30838
Dana	J.	Laridaen	February 21, 2008	30839

Giancarlo		Licata	February 21, 2008	30840
Martin	Franklin	Loftin Jr.	February 21, 2008	30841
Shannon	Midori	McIlInay	February 21, 2008	30842
Julie	Rachel	Moen	February 21, 2008	30843
Leah	Beth	Parsanko	February 21, 2008	30844
Christina	Darlene	Rodriguez	February 21, 2008	30845
David		Sisopha	February 21, 2008	30846
Katie	Ann	Sokolski	February 21, 2008	30847
Helen	Hoi Yan	Tong	February 21, 2008	30848
Timothy	John	Weimer	February 21, 2008	30849
Shelley	Ann	Burmaz	March 3, 2008	30850
Senh	Kevin	Chang	March 3, 2008	30851
Kendra	Lee	Cohn	March 3, 2008	30852
James	Christopher	Cox	March 3, 2008	30853
Kristy	Marie	Holmes	March 3, 2008	30854
Harold	Joseph Kenui	Iseke II	March 3, 2008	30855
Jasmine	Gayatri	Jackson	March 3, 2008	30856
Joseph	Navallo	Jaime	March 3, 2008	30857
Taryn	Margaret	Kreipe	March 3, 2008	30858
Joy	Chia-Hsiang	Liu	March 3, 2008	30859
Gabriel	Joshua	Marichi	March 3, 2008	30860
Naroth		Nop	March 3, 2008	30861
Samuel		Ruiz	March 3, 2008	30862
Adam	Michael	Schotzko	March 3, 2008	30863
Deanne	Carol	Watkins	March 3, 2008	30864
Johnna	Diann	West	March 3, 2008	30865
Jessica	Lee	Corkill	March 3, 2008	30866
John	Donovan	DeWitt II	March 3, 2008	30867
Kristen	Ann	Saxton	March 3, 2008	30868
Jennifer	Reyes	Francisco	March 4, 2008	30869
Michelle	Marie	Litzinger	March 4, 2008	30870
Nick	James	Baker	March 7, 2008	30871
Paul	Kent	Bolton	March 7, 2008	30872
William		Knodel	March 7, 2008	30873
Victor	Sadeghi	Malvajerdi	March 7, 2008	30874
John	Byron	Mikalson	March 7, 2008	30875
Paul	Thomas	Picha	March 7, 2008	30876
Gassia		Titizian	March 7, 2008	30877
Jennifer	Marie	Vaccaro	March 7, 2008	30878
James	Patrick	Von Hippie	March 7, 2008	30879
Rachel	Wing-Kwun	Yan	March 7, 2008	30880
Stefanie	Danielle	Yuen	March 7, 2008	30881
Dustin	Livingston Garrett	Agnelli	March 17, 2008	30882

Logan	James	Frahm	March 17, 2008	30883
Jesse	Thomas	Morris	March 17, 2008	30884
Mohamad	Baktash	Noori	March 17, 2008	30885
Eugene	J	Sung	March 17, 2008	30886
Charles	Andrew	Caughlin	March 25, 2008	30887
Victor	Manuel	Chavez	March 25, 2008	30888
Ya-Yuan		Cheng	March 25, 2008	30889
Homan		Dibagohar	March 25, 2008	30890
Anahid		Ekmekdjian	March 25, 2008	30891
Julia	Crystal	Johnson	March 25, 2008	30892
Clifton	Sergio	Perry	March 25, 2008	30893
Gino	Carl	Pucino	March 25, 2008	30894
Kristal	Dawn	Shropshire	March 25, 2008	30895
Katrina	Marie	Stopper	March 25, 2008	30896
Eric	Donald	Wagnon	March 25, 2008	30897
Wendy	Laddawan	Yang	March 25, 2008	30898
Jen-Wei		Chen	March 25, 2008	30899
Jennifer	Lynn	Collins	March 25, 2008	30900
Rebecca	Ann	Knight	March 25, 2008	30901
Jeffrey	Christopher	Abreu	April 25, 2008	30902
Michelle	Janet	Chauss	April 25, 2008	30903
Alisa	Jeanne	Cross	April 25, 2008	30904
Tanya	Maria	Dobrzanski	April 25, 2008	30905
Jamie	Michelle	Engel	April 25, 2008	30906
Adam	Richard	Evans	April 25, 2008	30907
Eric	Salvador	Garcia	April 25, 2008	30908
Jason	Kenneth	Goss	April 25, 2008	30909
Michael	David	Haight	April 25, 2008	30910
Chi	Fun	Ho	April 25, 2008	30911
Robert	Brant	Hoyt	April 25, 2008	30912
Krista	Ingrid	Koop	April 25, 2008	30913
Philip	Brian	Kossover	April 25, 2008	30914
Vu	Van	Le	April 25, 2008	30915
Kaluk		Lee	April 25, 2008	30916
Chung	Shih	Lim	April 25, 2008	30917
Gregg	S	Mallett	April 25, 2008	30918
Christopher	Jason	Matoch	April 25, 2008	30919
Jason	Holt	Mavor	April 25, 2008	30920
Jennifer	Leanne	McHattie	April 25, 2008	30921
Kryssa	Ann	Mooney	April 25, 2008	30922
Christopher	A	Moran	April 25, 2008	30923
Maria	Esmeralda	Mozeson	April 25, 2008	30924
Julianne	Klein	Newman	April 25, 2008	30925

Andrea	Louise	Patane	April 25, 2008	30926
Michael	Sheriar	Rehl	April 25, 2008	30927
Steven		Rottell	April 25, 2008	30928
Kimberly	Marie	Smeltzer	April 25, 2008	30929
Matthew	George	Tatsuno	April 25, 2008	30930
Ngoc-Nga	Thi	Tran	April 25, 2008	30931
Laurie	Elizabeth	Wonnell	April 25, 2008	30932
Ian	Inteus	Beckingham	May 6, 2008	30933
Aram	Joseph	Casparian	May 6, 2008	30934
Tyler	Lee	Comer	May 6, 2008	30935
Ryan	Glenn	Gessay	May 6, 2008	30936
Kathryn	Anne	Haag	May 6, 2008	30937
Chad	Eric	Kelly	May 6, 2008	30938
Ronald	A.	Soriano	May 6, 2008	30939
Ryan	Russell	Steen	May 6, 2008	30940
Bryan	Allen	Wright	May 6, 2008	30941
Joshua	Gary	Bross	May 13, 2008	30942
Jason	Scott	Gonzales	May 13, 2008	30943
Christopher	Edwin	Johnsen	May 13, 2008	30944
Ryan	Daniel	Kauffman	May 13, 2008	30945
Roy		Nissim	May 13, 2008	30946
Angela	Lynn	Tamsett	May 13, 2008	30947

MEMORANDUM

Date: May 15, 2008

To: Board Members

From: Brian J. Stiger,
Executive Officer

Subject: Ratification of Formerly Approved Continuing Education Providers

This is to request that the Board ratify the following approved continuing education providers at the May 22, 2008, public meeting.

Staff reviewed and confirmed that the applicants met the requirements and then approved of the following continuing education providers between May 4, 2006, and May 8, 2008:

Continuing Education Providers	Date of Staff Approval
George R. LeBeau, D.C.	05/04/06
William J. Moreau, D.C.	05/08/06
Nancy M. Molina, D.C.	12/14/06
Chi's Enterprise, Inc.	04/10/07
Recovery Systems Clinic	06/14/07
Lorman Business Center, Inc.	08/09/07
Victor Y. Tong, D.C.	08/09/07
Marcello Caso Chiropractic, Inc.	10/22/07
M. Daniel Bivins, D.C.	11/02/07
H. J. Ross Company	11/20/07
Sole Supports	05/08/08

If you have any questions or concerns, please contact me at your earliest opportunity.

Elaine M. Howle
State Auditor

Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

555 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

www.bsa.ca.gov

March 25, 2008

2007-117

Brian Stiger, Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833

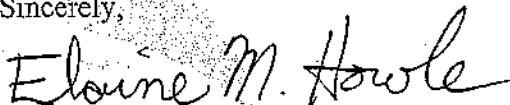
Dear Mr. Stiger:

Enclosed is our report titled *State Board of Chiropractic Examiners: Board Members Violated State Laws and Procedural Requirements, and Its Enforcement, Licensing, and Continuing Education Programs Need Improvement*. In addition, we have enclosed a fact sheet listing the key issues identified in the audit report.

Please respond to us within 60 days, 6 months, and 1 year on your efforts to implement those recommendations that are within your statutory authority. Your responses should include (1) a timetable for implementing our recommendations and (2) the name of the person or persons who will be responsible for implementation. Also, please include the rules, memoranda, and other relevant materials that document either your implementation of the recommendations or the steps you have taken to rectify those problems discussed in our report.

The information you provide us will be used to determine the need for a follow-up review by the state auditor or, in some cases, the need for a committee hearing. When appropriate, we will provide this information to the relevant fiscal committees and subcommittees at the beginning of the budget cycle to facilitate legislative oversight of audited agencies. To assure that those committees and subcommittees receive current information, the timing of the 60-day, 6-month, and 1-year responses may be modified slightly on a case-by-case basis.

Sincerely,



ELAINE M. HOWLE
State Auditor

Enclosure

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
www.chiro.ca.gov



May 25, 2008

Elaine M. Howle, State Auditor
California Bureau of State Audits
555 Capitol Mall, Ste. 300
Sacramento, CA 95814

Dear Ms. Howle:

Pursuant to your request, this updates you on progress the Board of Chiropractic Examiners (BCE) has made in implementing the Bureau of State Audit's recommendations contained in its report dated March 25, 2008.

The BCE has made significant progress thus far and is on track to implement all but one recommendation within the next six months.

If you have any questions or need additional information, please contact me at your earliest opportunity.

Best regards,

Brian J. Stiger,
Executive Officer

Attachment: BCE 60 Day Response

Bureau of State Audits' Recommendations 60 Day Status
Chapter 1
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
<p>To ensure that it complies with all Bagley-Keene requirements, the chiropractic board should:</p> <ul style="list-style-type: none"> • Continue to involve legal counsel in providing instruction and training to board members at each meeting. • Continue to retain documentation of the steps it takes to publicly announce its meetings. 	<p>Yes Yes</p>			A
<p>To ensure that the chiropractic board complies with administrative procedure act requirements, board members should ensure they limit their communications related to board business so they do not engage in ex parte communications or compromise their ability to fulfill their responsibility in enforcement hearings.</p>	<p>Yes</p>			B
<p>To ensure compliance with the initiative act, the chiropractic board should modify its current process so that board members make the final decision to approve or deny all licenses. Additionally, board members should ratify the previous license decisions staff made.</p>	<p>Yes</p>			C
<p>To comply with the political reform act, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> • Ensure that its filing official is aware of the role and responsibilities and similarly, promptly inform anyone replacing the filing official. • Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, to identify potential conflicts of interest. • Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code. 	<p>Yes No No</p>	<p>07/01/08 07/01/08</p>	<p>Executive Officer Executive Officer</p>	D

Bureau of State Audits' Recommendations 60 Day Status
Chapter 1 (Cont.)
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
The chiropractic board should consider providing state e-mail accounts to its board members so they conduct their chiropractic board business in a secure and confidential environment and make their actions and correspondence accessible under public records act requests.	Yes			F
To ensure that they continue to improve their knowledge and understanding of Bagley-Keene, other state laws, and board procedures, board members should continue to use their newly adopted administrative manual as guidance for conducting board business.	Yes			G
To ensure that it complies with Bagley-Keene requirements and state laws requiring board members to attend training within specific time frames, and to ensure board members receive orientation within a reasonable amount of time of assuming office, the chiropractic board should:	Yes			H
<ul style="list-style-type: none"> • Ensure staff retain documentation when they provide a copy of the Bagley-Keene to each board member. • Continue to use the member appointment checklist and establish procedures to periodically record and monitor board member training. • Continue the practice of sending new board members to the orientation that Consumer Affairs provides. 	Yes No Yes	07/01/08	Executive Officer	

Bureau of State Audits' Recommendations 60 Day Status
Chapter 2
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
<p>To ensure that it has adequate controls over its complaint review process, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> Develop procedures to ensure that the chiropractic board processes and resolves complaints as promptly as possible by establishing benchmarks and more structured policies and procedures specific to each step in its complaint review process. Establish time frames for staff to open complaint cases, complete initial review, refer cases to an investigator or expert if necessary and close or otherwise resolve complaints through implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process. Periodically review the status of all open complaints and investigations and identify and resolve any delays in processing. Strengthen its enforcement policies and procedures to minimize the amount of time it takes staff to process consumer complaints before forwarding them to the attorney general or other law enforcement agency to ensure that it adequately assists attorneys and law enforcement agencies in enforcing the laws of chiropractic. 	No	08/01/08	Executive Officer Compliance Manager	
	No	08/01/08	Executive Officer Compliance Manager Field Ops. Manager	
	No	08/01/08	Executive Officer	
	No	08/01/08	Executive Officer Compliance Manager Field Ops. Manager	
<p>To ensure that its enforcement procedures are complete and provide adequate guidance to enforcement staff, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> Develop policies and procedures requiring that only a manager or a designated employee are allowed to make the final decisions on complaint resolution. Develop procedures to ensure that staff reports the issuance of citations to other states' chiropractic boards and regulatory agencies. Develop procedures instructing staff when to open and how to process complaints generated internally. 	No	07/01/08	Executive Officer	
	No	08/01/08	Compliance Manager	
	No	07/01/08	Compliance Manager	

Bureau of State Audits' Recommendations 60 Day Status
Chapter 2 (Cont.)
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
To ensure that it processes and resolves consumer complaints regarding the same allegations consistently and that it consistently processes consumer complaints according to its enforcement policies and procedures, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.	No	08/01/08	Executive Officer Compliance manager Field Ops. Manager	
To ensure that its processes for prioritizing consumer complaints are adequate and effective to ensure that staff clearly identify and process priority complaints promptly, the chiropractic board should do the following: <ul style="list-style-type: none"> • Implement tracking methods, such as flagging priority cases during complaint intake, using multiple levels of priority categories, and assigning specific time frames to process those priority categories. • Establish procedures that direct board management to monitor the status of open complaints regularly especially those given priority status, to ensure that they do not remain unresolved longer than necessary. 	No	08/01/08	Executive Officer Compliance Manager	
To ensure that it is in compliance with all of its regulations, the chiropractic board should carefully consider the intended purpose of the quality review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic board decides that another option would better accomplish the intended purpose of the quality review panels, it should implement the process for revising its regulations.	Yes	07/01/08	Executive Officer	I
To ensure that it has necessary resources to answer technical questions regarding quality of care and improper treatment that often arise, the board should fill and maintain its chiropractic consultant position. In addition, the board should ensure that its chiropractic consultant acts only in an advisory capacity and that the executive officer makes the final decision.	No		Board Members Executive Officer	

Bureau of State Audits' Recommendations 60 Day Status
Chapter 2 (Cont.)
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
<p>To ensure that it adequately controls the use of experts, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> Establish policies and procedures requiring its staff to document interviews with experts, including the content of those discussions to ensure that it refers cases to qualified experts who are free of conflicts. Consider entering into formal written contracts for services from experts or require them to provide written attestations that they are free of conflicts in cases assigned. Strengthen its policies and procedures to ensure that its staff monitor experts on their adherence to the established 30-day deadline for reviewing complaint cases and submitting a written report. Consistently perform an evaluation of the expert's written report and thoroughly document the results of the evaluations to ensure that it does not inappropriately refer complaint cases to experts who have not demonstrated quality work in the past. 	<p>No</p> <p>Yes</p> <p>No</p> <p>No</p>	<p>08/01/08</p> <p>08/01/08</p> <p>08/01/08</p>	<p>Executive Officer Legal Counsel Compliance Manager</p> <p>Executive Officer Compliance Manager</p> <p>Compliance Manager</p>	<p>J</p>
<p>To ensure that the chiropractic board can demonstrate that its employees meet the minimum qualifications for their positions, it should retain personnel documentation on all employees according to record retention policy. In addition, the chiropractic board should require its personnel contractor to comply with the same requirements.</p>	<p>Yes</p>			
<p>To ensure that future chiropractic consultants are hired with the desired qualifications, the board should consider revising the position's minimum qualifications to provide additional clarity on the term practice of chiropractic, similar to the board's current requirements for experts.</p>	<p>No</p>	<p>01/01/09</p>	<p>Board Members Executive Officer</p>	

Bureau of State Audits' Recommendations 60 Day Status
Chapter 3
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
<p>To ensure that it is able to measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> • Establish time frames for all types of applications and petitions the board processes. • Establish a tracking system for applications and petitions to analyze where delays are occurring and ensure that applications and petitions are processed promptly. • Establish a time frame for resolving appeals that includes milestones for each phase of the process. 	<p>No</p> <p>No</p> <p>No</p>	<p>08/01/08</p> <p>08/01/08</p> <p>08/01/08</p>	<p>Executive Officer Licensing Manager</p> <p>Licensing Manager</p> <p>Licensing Manager</p>	
<p>To ensure that it only licenses those who are committed to following its laws and regulations, the chiropractic board should develop specific policies and procedures for staff to follow when the board has received a complaint against an applicant seeking licensure.</p>	<p>No</p>	<p>08/01/08</p>	<p>Licensing Manager</p>	
<p>To ensure that the chiropractic board is able to defend its decisions on approved applications for satellite offices, corporations, and referral services, it should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.</p>	<p>No</p>	<p>08/01/08</p>	<p>Licensing Manager</p>	
<p>To ensure that it is placing licenses on forfeiture status according to the initiative act, the chiropractic board should do the following:</p> <ul style="list-style-type: none"> • Establish specific procedures for staff to follow when licensees submit invalid payment when renewing licenses. • Establish a tracking method to ensure that requests for repayment are sent promptly 	<p>No</p> <p>No</p>	<p>08/01/08</p> <p>08/01/08</p>	<p>Licensing Manager</p> <p>Licensing Manager</p>	

Bureau of State Audits' Recommendations 60 Day Status
Chapter 3 (Cont.)
May 22, 2008

Audit Recommendations	Fully Implemented	Estimated Comp. Date	Person(s) Responsible	Exhibit
<p>To ensure that the chiropractic board's continuing education program complies with current regulations, it should do the following:</p> <ul style="list-style-type: none"> • Have board members ratify staff approvals of continuing education providers. • Ensure its process to approve continuing education providers conforms with its regulations. • Comply with requirements for notifying providers of board member approval within two weeks following a scheduled board meeting and for notifying providers of application deficiencies within three weeks of receiving the application. • Establish a process to track and monitor whether continuing education providers submit attendance rosters within 60 days of course completion. • Establish a procedure for maintaining accurate documentation of continuing education audits of licensees. • Establish a mechanism to ensure that all relevant steps are taken before continuing education audits are considered complete. • Establish a process to track course audits conducted and a procedure for taking corrective action when the course reviewer identifies a deficiency. 	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>	<p></p> <p>08/01/08</p> <p>08/01/08</p> <p>08/01/08</p> <p>08/01/08</p> <p>08/01/08</p>	<p></p> <p>Licensing Manager</p> <p>Licensing Manager</p> <p>Licensing Manager</p> <p>Licensing Manager</p> <p>Licensing Manager</p>	<p>L</p>

End of Report

BSA 60-Day Status Report

Exhibit A

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
 Sacramento, California 95833-2931
 Telephone (916) 263-5355 FAX (916) 263-5369
 CA Relay Service TT/TDD (800) 735-2929
 Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>



**BOARD OF CHIROPRACTIC EXAMINERS
 NOTICE OF PUBLIC BOARD MEETING**

Thursday, April 19, 2007

9:30 a.m.

**Four Points by Sheraton LAX
 9750 Airport Boulevard
 Los Angeles, California 90045
 (310) 649-7024**

AGENDA**Call to Order**

Richard Tyler, D.C., Chair
 Frederick Lerner, D.C., Vice-Chair
 Francesco Columbu, D.C., Secretary
 Hugh Lubkin, D.C.
 Judge James Duvaras (Ret.), Public Member
 Jim Conran, Public Member

Approval of Minutes

March 1, 2007, Open Session A
 March 23, 2007, Open Session B

Hearing re: Petition for Early Termination of Probation

• John F. Koningh C

Hearings re: Petitions for Reinstatement of Revoked Licenses

• Robert J. Montoya D
 • Anthony T. Johnson E
 • Joseph Cobbs F
 • Jeffrey Nabatama G

CLOSED SESSION

Deliberation on Disciplinary Matters and Action on Disciplinary Decisions
 Pursuant to California Government Code Section 11126(c)(3)

Chair's Report

- Introduction of new Board member – Jim Conran
- Committee Assignments

Executive Director's Report

- Operational Changes
- FCLB 81st Annual Congress – May 2-6, 2007, St. Louis, Missouri
- Procedure for Placing Items on the Agenda H

Board Member training on the Bagley-Keene Open Meetings Act, Administrative Procedures Act and other relevant laws

**Program Reports**

- Administration
 Budget Update I
- Enforcement
 Statistics J

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

**Thursday, August 16, 2007
10:00 a.m.**

Department of Transportation
4050 Taylor Street
San Diego, CA 92110
619-220-7363

AGENDA**PUBLIC SESSION****Call to Order**

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

CLOSED SESSION**Call to Order**

Pursuant to California Government Code Section 11126 (a)(1)

- Interviews and Possible Selection of Executive Officer

Deliberation on Disciplinary Matters and Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126 (c)(3)

PUBLIC SESSION**Call to Order****Approval of Minutes**

- Board Meeting June 21, 2007

Executive Officer's Report

- Administration
 - Budget Update
 - Personnel Update
 - Bureau of State Audits Update
 - Department of Consumer Affairs Services
- Enforcement
 - Statistics

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws



Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

October 25, 2007

9:00a.m

**Department of Consumer Affairs
1625 N. Market Blvd., Suite S102
Sacramento, CA 95834**

AGENDA**PUBLIC SESSION**

Call to Order

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

Approval of Minutes

August 16, 2007, Open Session

Executive Officer's Report

- Administration
 - Budget Update
 - Personnel Update
 - Bureau of State Audits Update
- Enforcement
 - Statistics

Assembly Bill 801 and Any Other Legislation of Interest to the Board**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Mission Statement**

- Discussion and Possible Action on Mission Statement

Committee Reports**Discussion and Possible Action:**

- Administrative Committee
 - Board Member Procedure Manual
- Continuing Education Committee
 - Proposed Procedures for Approval of CE Courses and Providers

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

November 27, 2007

Upon Conclusion of Enforcement Committee Meeting
which is scheduled to start at 9:00 a.m.

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**PUBLIC SESSION****Call to Order**

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

Approval of Minutes

October 25, 2007, Open Session

Executive Officer's Report

- Administration
 - Budget Update
- Licensing
 - Statistics
- Enforcement
 - Statistics

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws**Federation of Chiropractic Licensing Boards (FCLB) District Meeting Delegate Report**

- FCLB General Information and PACE Presentation

Committee Reports**Discussion and Possible Action:**

- Continuing Education Committee

Discussion and Possible Action:

- Enforcement Committee

Discussion and Possible Action:

- Manipulation Under Anesthesia (MUA) Committee

Board of Chiropractic Examiners

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Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

January 10, 2008

Upon Conclusion of the MUA Committee Meeting

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**PUBLIC SESSION****Call to Order**

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

Board Member Opening Remarks**Election of Officers for 2008****Candidate Statements**

- Chair
- Vice Chair
- Secretary

New Chair's Opening Remarks**Approval of Minutes**

November 27, 2007, Open Session

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws**Executive Officer's Report**

- Budget
- Licensing
- Enforcement

Committee Reports**Discussion and Possible Action:**

- Manipulation Under Anesthesia (MUA) Committee (The Board may take action on any agenda item listed on the attached MUA Committee Agenda)

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING - AMENDED**

Notice is hereby given that a meeting of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the Administrative Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C.

CLOSED SESSION**Discussion on Pending Litigation**

Pursuant to California Government Code Section 11126(e)

- **David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes**
Sacramento County Superior Court, Case No. 07AS03721
- **Catherine Hayes v. Board of Chiropractic Examiners**
Department of Fair Employment and Housing and Department of Industrial Relations
Complaints
- **Bryan Meredith, D.C. v. M. Maggie Craw, D.C. et al.**
Sacramento County Superior Court, Case No. 07AS03639

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126(c)(3)

- Aster Kifle-Thompson

PUBLIC SESSION**Call to Order****Chair's Report****Committees and Committee Assignments'****BCE Staff Recognition****Approval of Minutes**

January 10, 2008, Open Session

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws



Board of Chiropractic Examiners

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**NOTICE OF BOARD MEETING****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 24, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update

Board Meeting Checklist

Meeting Date: NOV 27, 2007

Petitioners? NO

15 days before meeting 11/12/07

- ☒ Send email to confirm Board members/staff attendance by "Verbal"
- ☒ Work with Executive Officer and Board secretary to prepare "draft" agenda 11/13/07
- ☒ Send email to staff regarding exhibits for meeting packets with a deadline date of (10 days prior to meeting) _____
- ☒ Confirm meeting room reservations 11/2/07

12 days before meeting (minimum 10 days before meeting) 11-16-07

- ☒ Mail Notice and Agenda to Interested Parties on mailing list 11-16-07
- ☒ Send email to Doug to post notice and agenda on website 11-15-07
- ☒ Email agenda to Board members, staff, and legal counsel 11-15-07
- ☒ Follow-up on receipt of exhibits for packets _____
- ☒ Follow-up on attendance confirmations _____

10 days before meeting 11-16-07

- ☒ BEGIN PREPARING board packets
 - ❖ 11 copies (Board members, counsel, staff and file copy)
 - ❖ 20 copies for public DO NOT INCLUDE closed session items

7 days before meeting 11-20-07

- ☒ Mail ALL packets OVERNIGHT to Board members and legal staff
- ☒ Distribute packets to office staff

ATTENDING?

- ☒ F. Lerner
- ☒ R. Tyler
- ☒ F. Columbu
- ☐ _____

- ☒ J. Conran
- ☒ H. Lubkin
- ☒ Judge Duvaras

- ☒ B. Stiger
- ☒ L. Powell
- ☒ T. Rinaldi
- ☒ M. Valencia

- ☐ L. Matthews
(if attending)

- ☒ File Copy

Board Meeting Checklist

Meeting Date: Jan 10, 2008

Petitioners? _____

15 days before meeting

- ☐ Send email to confirm Board members/staff attendance by _____
- ☐ Work with Executive Officer and Board secretary to prepare "draft" agenda _____
- ☒ Send email to staff regarding exhibits for meeting packets with a deadline date of (10 days prior to meeting) _____
- ☒ Confirm meeting room reservations _____

12 days before meeting (minimum 10 days before meeting)

- ☒ Mail Notice and Agenda to Interested Parties on mailing list 12/31/07
- ☒ Send email to Doug to post notice and agenda on website DTS posted on website 12/28/2007
- ☒ Email agenda to Board members, staff, and legal counsel _____
- ☒ Follow-up on receipt of exhibits for packets 12/28/07 & 1/3/08
- ☒ Follow-up on attendance confirmations 12/20/07 & 1/8/08

10 days before meeting 1/2/08

- ☒ BEGIN PREPARING board packets
 - ❖ 11 copies (Board members, counsel, staff and file copy)
 - ❖ 20 copies for public **DO NOT INCLUDE** closed session items

7 days before meeting 1/3/08

- ☒ **Mail ALL packets OVERNIGHT** to Board members and legal staff
- ☒ Distribute packets to office staff

ATTENDING?

- | | |
|--|---|
| <input checked="" type="checkbox"/> F. Lerner | <input checked="" type="checkbox"/> J. Conran |
| <input checked="" type="checkbox"/> R. Tyler | <input checked="" type="checkbox"/> H. Lubkin |
| <input checked="" type="checkbox"/> F. Columbu | <input checked="" type="checkbox"/> Judge Duvaras |
| <input type="checkbox"/> _____ | |

- | |
|---|
| <input checked="" type="checkbox"/> B. Stiger |
| <input checked="" type="checkbox"/> L. Powell |
| <input checked="" type="checkbox"/> T. Rinaldi |
| <input checked="" type="checkbox"/> M. Valencia |

- ☐ ^{NO}L. Matthews
(if attending)
- ☒ File Copy

Board Meeting Checklist

Meeting Date: 3-27-08

Petitioners? N

Beginning at least 15 days before meeting 3/12/08

✓ Task	Date Completed
✓ send email to confirm Board member/staff attendance	
✓ begin working with Executive Officer/Board Secretary on "draft" agenda	3-12-08 mv
✓ send email to staff regarding exhibits for meeting packets w/ deadline date (8 days prior to meeting)	
✓ confirm meeting room reservation	3-17-08 mv

10 days before meeting 3-17-08

✓ Task	Date Completed
✓ post Notice & Agenda on website	3-14-08 & 3-17-08 mv
✓ mail notice & Agenda to Interested Parties on mailing list	3/17/08 mv
✓ email agenda to Board members, staff & legal counsel	3/17/08 mv
✓ follow-up on attendance confirmation (if not, already received)	3-17-08 mv

Beginning 9 days before meeting 3-18-08

✓ Task	Date Completed
✓ BEGIN preparing board packets	3/18/08 mv
✓ * 11 copies (Board members, counsel, staff & file copy)	3/20/08

7 days before meeting 3-20-08

✓ Task	Date Completed
✓ Mail packets OVERNIGHT to Board members & legal staff	3/20/08 mv
✓ distribute packets to office staff	3/20/08

1 day after Board members receive their packets 3-24-08

✓ Task	Date Completed
✓ Post meeting materials on website	3/24/08 mv

2-3 days before the Board meeting 3-25-08

✓ Task	Date Completed
✓ make copies of meeting materials for public	3/25/08 mv
✓ pack necessary materials for meeting	

ATTENDING?

☒ F. Lerner
☒ R. Tyler
☒ F. Columbu
☐

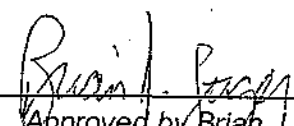
☒ J. Conran
☒ H. Lubkin
☒ Judge Duvaras

☒ B. Stiger
☒ L. Powell
☒ T. Rinaldi

☒ M. Valencia
☒ File Copy



Completed by Marlene Valencia
 Board Member Liaison



Approved by Brian J. Stiger
 Executive Officer

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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Sacramento, California 95833-2931
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ARNOLD SCHWARZENEGGER, Governor



NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Legislative Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008

9:00 a.m.

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA

CALL TO ORDER

Discussion and Possible Action:

- Assembly Bill 450

Discussion and Possible Action:

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING – CORRECTED TIME

Notice is hereby given that a meeting of the Legislative Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
8:30 a.m.
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Discussion and Possible Action:

- Assembly Bill 450

Discussion and Possible Action:

- Assembly Bill 1861

Discussion and Possible Action:

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Enforcement Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
Upon Conclusion of the Legislative Committee Meeting
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Approval of Minutes
January 10, 2008

Discussion and Possible Action:

Expert Witness Manual

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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ARNOLD SCHWARZENEGGER, Governor

NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Enforcement Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
Upon Conclusion of the Legislative Committee Meeting
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Approval of Minutes
January 10, 2008

Discussion and Possible Action:

- Expert Witness Manual

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Manipulation Under Anesthesia (MUA) Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008

Upon Conclusion of the Enforcement Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA

Call to Order

Discussion and Possible Action

- MUA Standard of Care Draft Regulations

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the Manipulation Under Anesthesia (MUA) Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
Upon Conclusion of the Enforcement Committee Meeting
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

Call to Order

Discussion and Possible Action

- MUA Standard of Care Draft Regulations

PUBLIC COMMENT

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>



NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Administrative Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
Upon Conclusion of the MUA Committee Meeting
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

Call to Order

Discussion and Possible Action

- Interagency Agreement with Department of Consumer Affairs (DCA)

Discussion and Possible Action

State Issued E-mail Addresses for Board Members



ARNOLD SCHWARZENEGGER, Governor

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Administrative Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
Upon Conclusion of the MUA Committee Meeting
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

Call to Order

Discussion and Possible Action

- Interagency Agreement with Department of Consumer Affairs (DCA)

Discussion and Possible Action

- State Issued E-mail Addresses for Board Members

Discussion and Possible Action

- Board Member Administrative Procedure Manual Updates

<http://www.chiro.ca.gov>

NOTICE OF PUBLIC MEETING - AMENDED

Notice is hereby given that a meeting of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008

Upon Conclusion of the Administrative Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA

PUBLIC SESSION

Call to Order

Frederick Lerner, D.C., D.C., Chair

Hugh Lubkin, D.C., Vice-Chair

Francesco Columbu, D.C., Secretary

Jim Conran, Public Member

Judge James Duvaras (Ret.), Public Member

Richard Tyler, D.C.

CLOSED SESSION

Discussion on Pending Litigation

Pursuant to California Government Code Section 11126(e)

- **David Hinchey v. Board of Chiropractic Examiners, Catherine Hayes**

Sacramento County Superior Court, Case No. 07AS03721

- **Catherine Hayes v. Board of Chiropractic Examiners**

Department of Fair Employment and Housing and Department of Industrial Relations

Complaints

- **Bryan Meredith. D.C. v. M. Magdale Crow. D.C. et al.**

committee

Board Meeting Checklist

Meeting Date: 4-24-08

Petitioners? NO

Beginning at least 15 days before meeting

4-9-08

✓ Task	Date Completed
✓ send email to confirm Board member/staff attendance	<u>verbal</u>
✓ begin working with Executive Officer/Board Secretary on "draft" agenda	<u>4/10/08</u>
send email to staff regarding exhibits for meeting packets w/ deadline date (8 days prior to meeting)	<u>—</u>
✓ confirm meeting room reservation	<u>3/28/08</u>

10 days before meeting

4-14-08

✓ Task	Date Completed
✓ post Notice & Agenda on website	<u>4-14-08</u>
✓ mail notice & Agenda to Interested Parties on mailing list	<u>4</u>
✓ email agenda to Board members, staff & legal counsel	<u>11</u>
✓ follow-up on attendance confirmation (if not, already received)	<u>—</u>

Beginning 9 days before meeting

4-15-08

✓ Task	Date Completed
✓ BEGIN preparing board packets	<u>4-17-08</u>
✓ * 11 copies (Board members, counsel, staff & file copy)	<u>—</u>

7 days before meeting

4-17-08

✓ Task	Date Completed
✓ Mail packets OVERNIGHT to Board members & legal staff	<u>4-17-08</u>
distribute packets to office staff	<u>—</u>

1 day after Board members receive their packets

4-21-08

✓ Task	Date Completed
✓ Post meeting materials on website	<u>4-21-08</u>

2-3 days before the Board meeting

4-21-08

✓ Task	Date Completed
✓ make copies of meeting materials for public	<u>4-23-08</u>
✗ pack necessary materials for meeting	<u>4-23-08</u>

ATTENDING?

- ☐ F. Lerner
☒ R. Tyler
☐ F. Columbu
☐

- ☐ J. Gonran
☒ H. Lubkin
☒ Judge Duvaras

- ☒ B. Stiger
☒ L. Powell
☐ T. Rinaldi

- ☒ M. Valencia
☒ File Copy

MV

Completed by Marlene Valencia
Board Member Liaison

Brian J. Stiger

Approved by Brian J. Stiger
Executive Officer

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Continuing Education Committee of the Board of Chiropractic Examiners will be held as follows:

Thursday, April 24, 2008
9:30 a.m.
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

- November 1, 2007

PUBLIC COMMENT

Discussion and Possible Action

- Proposed Approval Process for Continuing Education Providers

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the Licensing Committee of the Board of Chiropractic Examiners will be held as follows:

Thursday, April 24, 2008
(Upon Conclusion of the CE Committee Meeting)
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

PUBLIC COMMENT

Discussion and Possible Action

- Proposed Procedure for Approving Licenses



ARNOLD SCHWARZENEGGER, Governor

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the **Enforcement Committee of the Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008
(Upon Conclusion of the Licensing Committee Meeting)
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

Call To Order

Approval of Minutes
• March 27, 2008

PUBLIC COMMENT

Discussion and Possible Action

Comm.

Board Meeting Checklist

Meeting Date: 5-7-08

Petitioners? NO

Beginning at least 15 days before meeting

✓ Task	Date Completed
send email to confirm Board member/staff attendance	
begin working with Executive Officer/Board Secretary on "draft" agenda	
send email to staff regarding exhibits for meeting packets w/ deadline date (8 days prior to meeting)	
confirm meeting room reservation	

10 days before meeting

4-28-08

✓ Task	Date Completed
✓ post Notice & Agenda on website	<u>4-28</u>
✓ mail notice & Agenda to Interested Parties on mailing list	<u>4-28</u>
email agenda to Board members, staff & legal counsel	
follow-up on attendance confirmation (if not, already received)	

Beginning 9 days before meeting

4-29-08

✓ Task	Date Completed
BEGIN preparing board packets	
✓ * 11 copies (Board members, counsel, staff & file copy)	<u>4-30-08</u>

7 days before meeting

4-30-08

✓ Task	Date Completed
✓ Mail packets OVERNIGHT to Board members & legal staff	<u>4-30-08</u>
distribute packets to office staff	

1 day after Board members receive their packets

✓ Task	Date Completed
✓ Post meeting materials on website	<u>5-5-08</u>

2-3 days before the Board meeting

✓ Task	Date Completed
✓ make copies of meeting materials for public	<u>5-6-08</u>
pack necessary materials for meeting	

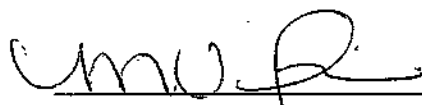
ATTENDING?

☐ F. Lerner
☐ R. Tyler
☐ F. Columbu
☐

☐ J. Conran
☐ H. Lubkin
☐ Judge Duvaras

☐ B. Stiger
☐ L. Powell
☐ T. Rinaldi

☐ M. Valencia
☐ File Copy



Completed by Marlene Valencia
Board Member Liaison



Approved by Brian J. Stiger
Executive Officer

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

Scope of Practice Committee

May 7, 2008
9:30 a.m.

2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Public Comment

ARNOLD SCHWARZENEGGER, Governor



STATE OF CALIFORNIA

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

Government Relations Committee

May 7, 2008
1:30 p.m.

2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Public Comment

Discussion and Possible Action

- Board Member Use of State Issued E-Mail Accounts

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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ARNOLD SCHWARZENEGGER, Governor



NOTICE OF PUBLIC MEETING

Public Relations Committee

May 7, 2008

Upon Conclusion of the Government Relations Committee
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

Public Comment

Discussion

- Overview of the Department of Consumer Affairs Public Relations Services

Discussion and Possible Action

- Development of Board of Chiropractic Examiners' Newsletter

Board Meeting Checklist

Meeting Date: 5/22/08

Petitioners? NO

Beginning at least 15 days before meeting 5/7/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	send email to confirm Board member/staff attendance	
<input checked="" type="checkbox"/>	begin working with Executive Officer/Board Secretary on "draft" agenda	
<input checked="" type="checkbox"/>	send email to staff regarding exhibits for meeting packets w/ deadline date (8 days prior to meeting)	
<input checked="" type="checkbox"/>	confirm meeting room reservation	

10 days before meeting 5/12/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	post Notice & Agenda on website	<u>5/12/08</u>
<input checked="" type="checkbox"/>	mail notice & Agenda to Interested Parties on mailing list	<u>11</u>
<input checked="" type="checkbox"/>	email agenda to Board members, staff & legal counsel	<u>11</u>
<input checked="" type="checkbox"/>	follow-up on attendance confirmation (if not, already received)	<u>11</u>

Beginning 9 days before meeting 5/11/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	BEGIN preparing board packets	<u>5-15-08</u>
<input checked="" type="checkbox"/>	* <u>12</u> copies (Board members, counsel, staff & file copy)	<u>"</u>

7 days before meeting 5/15/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	Mail packets OVERNIGHT to Board members & legal staff	<u>5-15-08</u>
<input checked="" type="checkbox"/>	distribute packets to office staff	<u>-</u>

1 day after Board members receive their packets 5/19/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	Post meeting materials on website	

2-3 days before the Board meeting 5/19/08

<input checked="" type="checkbox"/>	Task	Date Completed
<input checked="" type="checkbox"/>	make copies of meeting materials for public	
<input checked="" type="checkbox"/>	pack necessary materials for meeting	

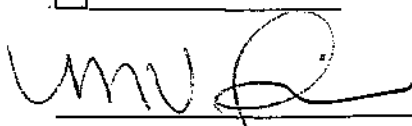
ATTENDING?

☒ F. Lerner
☒ R. Tyler
☒ E. Columbu
☐

☒ J. Conran
☒ H. Lubkin
☒ Judge Duvaras

☒ B. Stiger
☒ L. Powell
☒ T. Rinaldi

☒ M. Valencia
☒ File Copy



Completed by Marlene Valencia
 Board Member Liaison

Approved by Brian J. Stiger
 Executive Officer

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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ARNOLD SCHWARZENEGGER, Governor



NOTICE OF BOARD MEETING

May 22, 2008
Upon Conclusion of the Strategic Planning Committee Meeting
Hearing Room
1625 North Market Blvd., Room S102
Sacramento, CA 95834

AGENDA

PUBLIC SESSION
Call to Order

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report

Approval of Minutes

STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor



Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

LEGISLATIVE COMMITTEE

May 22, 2008

9:30 a.m.

Hearing Room

1625 N. Market Blvd, Room S102

Sacramento, CA 95834

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Discussion and Possible Action:

STATE OF CALIFORNIA

Board of Chiropractic Examiners

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NOTICE OF PUBLIC MEETING

STRATEGIC PLANNING COMMITTEE

May 22, 2008

Upon conclusion of the Legislative Committee
Hearing Room

1625 N. Market Blvd, Room S102
Sacramento, CA 95834

AGENDA

CALL TO ORDER

Discussion and Possible Action:

- Strategic Plan 2008

PUBLIC COMMENT

BSA 60-Day Status Report

Exhibit B

Board of Chiropractic Examiners

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BOARD OF CHIROPRACTIC EXAMINERS

PUBLIC SESSION MINUTES

Thursday, August 16, 2007

10:00 a.m.

Department of Transportation

4050 Taylor Street

San Diego, CA 92110

619-220-7363

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Acting Executive Officer
LaVonne Powell, DCA Senior Staff Counsel
Marlene Valencia, Staff Services Analyst

CALL TO ORDER

Dr. Tyler called the meeting to order at 10:05 a.m.

ROLL CALL

Dr. Columbu called the roll. All members were present with the exception of Judge Duvaras.

CLOSED SESSION

The Board went into closed session for interviews and possible selection of Executive Officer and also to deliberate on disciplinary matters.

OPEN SESSION

Dr. Tyler called the Board into open session at 10:45 a.m. All members were present with the exception of Judge Duvaras.

Dr. Tyler stated that the deliberations concerning the Executive Officer position has been postponed and will be concluded at the end of the open session meeting.

APPROVAL OF MINUTES

- June 21, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 1, 2007 open session minutes.

MR. CONRAN MOVED TO ADOPT THE JUNE 21, 2007 OPEN SESSION MINUTES. DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

EXECUTIVE OFFICER'S REPORT

Administration

Budget Update

Mr. Stiger stated that the Budget Conference Committee proposed a cut in the Board's budget by 50%, the budget has not passed yet, however if the state budget passes in its current form, we will have to enact immediate cost-saving measures which would include a staffing reduction and a reduction in our cases that go to the Attorney General's office. Services all around would have to be cut in order to meet the level.

Dr. Lerner asked if the Board can issue a statement on behalf of the Board. Ms. Powell suggested writing a letter to the author of the budget bill or the committee stating that cutting our budget will compromise consumer protection because we will have to cut back drastically on our enforcement activities.

DR. LERNER MOVED THAT THE BOARD SUBMIT A LETTER TO THE LEGISLATURE OR THE COMMITTEE REQUESTING EMERGENCY LEGISLATION TO RESTORE THE BUDGET ON THE BASIS THAT THIS IS GOING TO HARM OUR ABILITY TO PROTECT THE CONSUMER WHICH IS OUR NUMBER ONE PURPOSE. DR. LUBKIN SECONDED THE MOTION. MR. CONRAN ADDED THAT IF A LETTER IS TO BE SENT IT SHOULD ALSO BE SENT TO THE LEGISLATIVE LEADERSHIP AS WELL AS THE BUDGET CHAIR AND COPIES TO THE OVERSIGHT COMMITTEE'S AND A COPY TO THE GOVERNOR'S OFFICE. DR. LERNER ACCEPTED THE AMENDMENT. VOTE: 4-0. MR. CONRAN ABSTAINED.

Personnel Update

Mr. Stiger handed out the newest organizational chart. There is one revision to the chart that was included in the Board packet. There are a couple of changes since the last Board meeting. Lavella Matthews has been moved into an out-of-class Staff Services Manager I position. In her role, she will oversee licensing and administrative functions. The purpose of the change was to be sure that licensing had management oversight. It is currently a three month out-of-class with the ability to extend it. Mr. Stiger stated that these changes have been approved by the Consumer Affairs personnel office. As of Friday, August 10, 2007, the Chiropractic Consultant position is now vacant. At this current time, there is no plan to refill the position for a couple of reasons. One, with the budget uncertainties we should start saving money now. Second, we want to take a look at the Enforcement structure and perhaps reclassify the position in order to improve the enforcement operations. Mr. Stiger also announced the promotion of Marlene Valencia to Staff Services Analyst. She will now serve as the Board member liaison.

Mr. Conran inquired about the oversight of the Enforcement Program with the vacant consultant position and a manager that is currently working half-time. Mr. Stiger stated that he oversees the Enforcement program however; the absence of a consultant is more of an issue. Mr. Stiger has asked the Attorney General's office to provide recommendations of good, solid subject matter experts. Several of them have been contacted so that they're aware of our vacancy and that we may be requesting their assistance relating to scope of practice and quality of care questions. Mr. Stiger further stated that this may be an option to use on a permanent basis. Mr. Stiger also stated that these consultants are chiropractors and not state employees.

Dr. Tyler stated that he is thoroughly against having a chiropractic consultant again. He feels that we should aggressively contemplate going back to the way it was prior to 1995. Ms. Powell clarified how the experts would be utilized.

After discussion, it was decided to discuss the chiropractic consultant position at a future Board meeting.

Bureau of State Audits Update

Mr. Stiger reported the Bureau of State Audits have begun their process. Staff has been very responsive to their requests. It is anticipated that this audit will take approximately seven months.

Dr. Columbu suggested writing a response to the legislatures addressing the accusations against the Board. It was decided to place this topic on the agenda for the next Board meeting.

Department of Consumer Affairs

Mr. Stiger stated we just signed a contract with the Department of Consumer Affairs for administrative, legal and investigative services. The contract goes through December 31, 2007.

Dr. Lerner asked what happens to these contracted services if our budget is cut. Mr. Stiger responded that these are critical areas. He continued to state that he has identified which areas to scale back on in order to continue these services.

Enforcement

Statistics

Mr. Stiger reported that some of the enforcement cases are aged and he expects many of these cases will be completed within the next 60 days.

Board Member training on Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell clarified board member questions regarding when to recuse themselves from a case. Ms. Powell continued to provide ongoing training regarding the Bagley-Keene Open Meetings Act.

MISSION STATEMENT

After discussion on the mission statement for the Board, it was decided to table this item for a future meeting.

PROGRAM REPORTS

Licensing

License Statistics

Mr. Stiger referred to the license statistic chart for the last two years.

California Law and Professional Practices Exam (CLPPE) Statistics

Mr. Stiger referred to the CLPPE statistical chart.

DISCUSSION RE LICENSING OF CHIROPRACTIC ASSISTANTS

This item was tabled until the next Board meeting.

The Board recessed for lunch at 12:00p.m.

Dr. Tyler, D.C. called the Board into open session at 1:00 p.m. All Board members were present.

COMMITTEE REPORTS

Administrative Committee

Board Member Procedure Manual

Mr. Conran reported that the Administrative Committee met and discussed the procedure manual. There was lengthy discussion and revisions were suggested.

MR. CONRAN MOVED TO ACCEPT THE BOARD MEMBER ADMINISTRATIVE MANUAL WITH THE CORRECTIONS MADE TODAY. DR. LUBKIN SECONDED THE MOTION. VOTE: 2-3. MOTION FAILED.

MR. LERNER MOVED TO MAKE THE CHANGES AND PRESENT A FINAL DRAFT AT THE NEXT BOARD MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 5-0. MOTION CARRIED.

Ex Parte Policy re Board Member Communications

Mr. Conran stated at the Administrative Committee there was a 3-0 vote to approve the adoption of an Ex Parte Policy by the Board. The concept of an Ex Parte rule is to ensure there is transparency in communications to Board members when there is an issue on the agenda. Mr. Conran introduced Julie Fellmeth, Michael Shames and Steve Alexander to share the views on the Ex Parte Policy. All three guests shared the views on why they support adopting an Ex Parte Policy.

After a lengthy discussion, it was agreed that this item be deferred to the Administrative Committee for design of the Ex Parte and it will be brought back to the Board for further discussion.

Continuing Education Committee

Dr. Lubkin reported that the committee has had a few meetings. The committee is recommending there be due process for denials of a continuing education course. The Board will give the party notice and they will have 10-days to meet with the Executive Officer to address any concerns.

The committee also suggests the concept of having the evaluation of courses be handled by staff rather than the Board members. This will allow the Board members to work towards regulations and administrative changes to improve the process. The committee also discussed going back to a regulatory phase to increase the hours. Dr. Tyler stated that the chiropractic presence is essential in determining the educational requirements because staff is not knowledgeable of all techniques. Dr. Lubkin continued by stating that when there is a denial, the person who is denied will be notified of an exact code section that pertains to the denial.

Dr. Lerner asked the committee to discuss the acceptance of the FCLB policy. Dr. Lubkin stated the committee did discuss this issue and concluded that this needs to be part of the regulation.

MR. CONRAN MOVED TO ACCEPT THE CONTINUING EDUCATION COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Enforcement Committee

Dr. Lubkin reported the committee discussed adding fine authority to the citation program. A letter of admonishment procedure was also discussed. Staff will prepare the language and it will be presented at the next meeting.

DR. LUBKIN MOVED TO ACCEPT THE ENFORCMENT COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Legislative Committee

AB1137

Dr. Lerner reported that AB 1137 did not get out of the Senate, Business and Professions committee and is now dead.

SB801

Dr. Lerner gave a description of bill SB801 and reported that SB801 is moving forward. Dr. Lerner stated the based on the committee's previous recommendation the Board took a position of watch.

DR. COLUMBU MADE A MOTION TO TAKE A NEW POSITION THAT THE BOARD OPPOSES BILL SB801. DR. LERNER SECONDED THE MOTION. Mr. Conran stated that he does not agree that the Board should take opposition to the bill. Dr. Lubkin commented that taking a new position should be done carefully and suggests this go to the committee for thorough discussion. Following public comment from Charles Davis, D.C., Michael Blott, D.C., David Prescott and others, a vote was taken. **VOTE: 4-1. MOTION CARRIED.**

Dr. Lerner asked for clarification of bill SB840. Dr. Lerner recommended that this bill be looked at during the next Legislative Committee meeting.

Manipulation Under anesthesia (MUA)

Dr. Lerner reported that the committee, Mr. Stiger and Ms. Powell met with representatives from Office of Administrative Law (OAL) on July 17, 2007. Ms. Powell stated that the main fault with the way the regulations were written before was that it created a sub-category of licensure. Instead, the regulations should be focused on if you are a chiropractor, what is the standard of care if you are performing MUA. OAL stated that they would need a legal opinion that MUA is in fact, within the scope of practice for chiropractic. That is describing MUA appropriately so that its very clear that the chiropractor is performing the adjustment and is in no way directing the anesthesiologist or the physician surgeon who is sedating the patient. Ms. Powell will provide a legal opinion to the Board by the end of October.

Dr. Lerner commented that at the next MUA Committee meeting, David Prescott will give a 90-minute presentation on Scope of Practice.

DISCUSSION OF BOARD MEETING SCHEDULE AND PETITIONER HEARING DATES

Mr. Stiger indicated that the next scheduled Board meeting will be October 25, 2007. Board business will be held in the morning and petitioner hearings will be in the afternoon.

PUBLIC COMMENT

No public comment.

ADJOURNMENT

Dr. Tyler adjourned the public meeting at 3:31 p.m.

CLOSED SESSION

The Board went into closed session for further discussion regarding the selection of Executive Officer.

The Board briefly returned to open session to announce that the position of Executive Officer has been offered to Brian J. Stiger. Mr. Stiger has temporarily accepted the position until personnel issues can be worked out.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS****PUBLIC SESSION MINUTES****Thursday April 19, 2007****9:30 a.m.**

**Four Points by Sheraton LAX
9750 Airport Boulevard
Los Angeles, CA 90045**

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran
Hugh Lubkin, D.C.
Judge James Duvaras, Ret.

STAFF PRESENT

Brian J. Stiger, Acting Executive Director
LaVonne Powell, DCA Senior Staff Counsel
Lavella Matthews, Senior Licensing Program Analyst
Marlene Valencia, Business Services Assistant

PETITION HEARINGS:

Tim Thomas, Administrative Law Judge
Barry Thorpe, Deputy Attorney General
Thomas L. Rinaldi, Deputy Attorney General

GUESTS PRESENT

Mike Sackett, D.C., SCUHS
Steve Hartzell, PTBL
Joseph Cobbs
James Barrass, D.C.
B. Stanfield, D.C.
John Bueller, D.C., CCA
Jeffrey Nabatmama
Charles Davis, ICAC
Kathleen Hamilton
Roger Calton
Ed Cremata, National Academy of MUA Physicians

Kristine Shultz, CCA
Steven Jaffe, D.C., SCHUS
Kendra Holloway, D.C., LCCW
Cherrie DeWonda, OUIUS
Steven Becker, D.C.
Sarbjit Dhesi, D.C.
J.L. Moore
Craig Gunderson, D.C., AFICC
Carlos Negrete

Call to Order

Dr. Tyler called the meeting to order at 9:32 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Approval of Minutes

- March 1, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 1, 2007 open session minutes.

JUDGE DUVARAS MOVED TO ADOPT THE MARCH 1, 2007 OPEN SESSION MINUTES. DR. COLUMBU SECONDED THE MOTION. DISCUSSION WAS REQUESTED.

Dr. Columbu discussed changes he would like made to the minutes. It was agreed that staff would review the proposed changes and compare with records.

FOLLOWING A DISCUSSION, BOARD MEMBERS AGREED TO TABLE THIS SO THAT STAFF CAN REVIEW THE PROPOSED CHANGES AND PREPARE THE MARCH 1, 2007 OPEN SESSION MINUTES FOR APPROVAL AT THE NEXT BOARD MEETING.

- March 23, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 23, 2007 open session minutes.

JUDGE DUVARAS MOVED TO ADOPT THE MARCH 23, 2007 OPEN SESSION MINUTES. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Petition for Early Termination of Probation

Administrative Law Judge Tim Thomas presided over and Deputy Attorney General Barry Thorpe appeared on behalf of the people of the State of California on the following petition hearings:

- John F. Koningh D.C.

Petition Hearing for Reinstatement of Revoked License

Administrative Law Judge Tim Thomas presided over and Deputy Attorney General Thomas L. Rinaldi appeared on behalf of the people of the State of California on the following petition hearings:

- Anthony T. Johnson
- Joseph Cobbs
- Jeffrey Nabatmama

Mr. Robert J. Montoya did not appear for his hearing. Following the petitioners oral testimonies, the Board reconvened into closed session at 12:03 p.m. to consider Dr. Koningh's Petition for Early Termination of Probation and Mr. Johnson, Mr. Cobbs and Mr. Nabatmama's Reinstatement of Revoked License.

The Board recessed for lunch at 12:30 p.m.

Dr. Tyler called the Board into open session at 1:15 p.m. All Board members were present.

Dr. Tyler announced that due to guest speaker's time constraints, he moved to the Executive Director Search Committee Report agenda item. Dr. Lubkin introduced Jeffrey Sears, Staff Service Manager I, with Department of Consumer Affairs Office of Human Resources. Mr. Sears explained the process of appointing an Executive Director. Mr. Sears proposed that after the committee has screened the candidates and narrowed down to the top 3 candidates, those candidates would then be presented at a Board meeting for the full Board to interview and make a selection. Mr. Sears said the entire process takes about 2 months. Mr. Sears also reported that executive officer's are exempt from civil service and salaries are set by the Department of Personnel Administration in conjunction with the Governor's Office. He continued by saying that the Board initiative allows the Board to set the salary with the approval of the Department of Finance. Mr. Sears stated that the salary for the executive officer is set at Level M which is \$6,694-\$7,239 per month.

Dr. Tyler stated that he would like to have candidates appear before Board at the next Board meeting. Mr. Stiger stated that he would like to clarify that his purpose in the first meeting of the Executive Director Search Committee was to introduce Mr. Sears to Dr. Lubkin. Mr. Stiger would like it to be on record that because he may or may not be a candidate for the executive director position, so he will no longer be involved in anymore meetings.

Review of New Application for Board Approval as a Chiropractic College

Mr. Stiger stated that a new application had been posted on the website since fall of last year. It is the staff's recommendation that the application be moved to a committee for research and recommendation at a future Board meeting. Mr. Stiger stated its recommending the Board revert back to the old application at this time. Dr. Tyler asked for a motion.

JUDGE DUVARAS MOVED TO ACCEPT THE RECOMMENDATION OF THE BOARD STAFF. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Palmer Chiropractic College-Florida Decision

Mr. Stiger reported that last week Board staff and legal staff met with Palmer College representatives. The college has committed to providing the Board the necessary information, including a new application, to make a decision. Board staff recommended that the decision be reconsidered, and anticipates a successful resolution in 10 days. Once the application is received it will be brought before the Board at the next meeting. Dr. Tyler asked for a motion of reconsideration of motion that granted the application at the March 1, 2007 meeting.

DR. LERNER MOVED TO RECONSIDER THE MARCH 1, 2007 MOTION THAT GRANTED THE APPLICATION. DR. COLUMBU SECONDED THE MOTION. Dr. Tyler asked for comment. Judge Duvaras asked to hear from the Palmer College representative. Mr. Robert Levanthal confirmed Mr. Stiger's report. **VOTE: 6-0. MOTION CARRIED.**

Ms. Powell stated that in order to move forward, there needs to be a motion to rescind the March 1, 2007 approval. Dr. Tyler asked for a motion.

DR. LERNER MOVED TO RESCIND THE MARCH 1, 2007 APPROVAL OF PALMER CHIROPRACTIC COLLEGE-FLORIDA. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Out-of-State College Application

Mr. Stiger stated this is a duplicative agenda item.

Chair's Report

Dr. Tyler introduced and welcomed the newest Board member, Jim Conran who was appointed by the Governor on February 23, 2007.

Dr. Tyler appointed Drs. Lerner and Lubkin to the Administrative Committee; Dr. Lerner, Mr. Conran and Judge Duvaras to the Examination and Licensing Committee; Drs. Columbu and Lubkin to the Enforcement Committee; Mr. Conran and Drs. Lerner and Lubkin to the Legislative Committee; Drs. Tyler and Lubkin to the Continuing Education Committee; Judge Duvaras and Dr. Lubkin to the Regulations Committee; and Mr. Conran, Drs. Tyler and Lubkin and the Board Executive Officer to the Sunset Review Committee.

Executive Director's Report

Mr. Stiger reported on recent changes to ensure the security of the Board's business and personal information. Locks have been changed on both the exterior and interior doors; secured the computer network by eliminating remote access; staff has access to the building during normal business hours; staff attended mandatory training regarding the safeguarding of personal information. In order to improve customer service, phone coverage is now rotated amongst all staff. We are also in the process of updating our website to include a Press Release link and a Subscription List. The Board has implemented a Media Relations Policy to ensure that all media inquiries are directed to the Executive Director. The Board has also entered into a Short Term Contract with the Department of Consumer Affairs for Personnel, Legal and Fiscal Services. This contract will expire at the end of the fiscal year.

Mr. Stiger also reported on two recent bills, AB1113 and SB801, which were released this week. Board staff will analyze, track and report on those bills at the next meeting.

Mr. Stiger stated that both Mr. Conran and Dr. Lubkin will attend the Federation of Chiropractic Licensing Boards in St. Louis, Missouri on May 2-6, 2007.

Procedure for Placing Items on the Agenda

Mr. Stiger read the procedure for placing items on the agenda. After a discussion, it was agreed that Mr. Stiger will revise the procedure and present it at the next Board meeting.

Dr. Columbu would like to see contact information on website. Mr. Stiger agreed that it is a good suggestion and primary contact information will be on the website.

Board Member training on Bagley-Keene Open Meetings Act

Ms. Powell advised the Board members on concerns such as the when there are more than two members discussing an issue, that they don't violate the act; the public has a right to make comment; we always need to have an agenda item regarding public comment; the Board follows Robert Rules of Order in order to conduct a meeting however, if it conflicts with the open meetings act, then the Board needs to follow the open meetings act; keep motions simple; closed session must be noticed properly and cite the government code that allows the Board to discuss in closed session; agendas must be noticed to the public 10 days before a meeting; the agenda can not be changed once it is noticed. Ms. Powell also discussed the Administrative Procedures Act, Enforcement. Ms. Powell stated that Board members need to respect the boundary and not discuss any complaints with licensees. Board members are only entitled to hear the proposed decision. Ms. Powell encouraged members to have a copy of the disciplinary guidelines next to them while going over discipline cases.



Program Reports

Budget Update

Mr. Stiger reported on the Board's budget and stated that the Budget is "healthy". During discussion, Judge Duvaras asked about cost recovery. Mr. Stiger referred to agenda item K. Ms. Powell recommended reviewing the tax intercept program at the Respiratory Board. Ms. Powell also stated that there is movement in legislature regarding cost recovery.

Statistics

Mr. Stiger reported on Enforcement statistics over the last three fiscal years. During discussion, Dr. Columbu recommended the Enforcement Unit prioritize the complaints so that the investigators can be used for more serious issues. Dr. Lubkin shared his concerns by asking if the investigators being used for complaints such as the license not being properly displayed or are we using them for more serious allegations. After discussion, it was agreed that, depending on the nature of the complaint, it could be cost effective to be more pro-active in the Enforcement Unit, such as sending a letter to the chiropractor versus conducting a whole investigation. Mr. Stiger stated that he would look into these issues.

Charles Davis, D.C., expressed his concerns regarding reimbursement to the doctor if the doctor wins a case. He further commented on his desire to put Regulations 306.1 and 306 on a future agenda.

Mr. Stiger stated that it is staff's recommendation that Regulations 306.1 and 306 be assigned to the Enforcement Committee for review on how it should be implemented.

Roger Calton, an attorney, stated that he has seen an increase in claims by insurance companies against patients. Mr. Calton expressed his concerns regarding the privacy of the patients who are not making the complaint themselves.

Cost Recovery Data

This topic was discussed during the Budget Update.

License Statistics

Ms. Matthews reported on the license statistics. Dr. Lerner would like to see comparison figures on future reports.

California Law and Professional Practices Exam (CLPPE) Statistics

Ms. Matthews reported on the 2007 Quarterly CLPPE exams. After brief discussion, it was agreed that Board staff will prepare the report so that it is easier to read.

Discussion and Action: Approval of CE Courses

Ms. Powell reported that there was some confusion in regards to the title of this agenda. MS. Powell met with Genie Mitsuahara in the CE unit for clarification. Ms. Powell stated that if there is a syllabus then lecturer notes are not needed. Ms. Mitsuahara is working on a wish list to streamline the process and suggestions will be brought to the CE committee.

Manipulation under Anesthesia (MUA) decision

Dr. Tyler stated his views and the Board members views have already been made known that they feel MUA is within the pervue of the chiropractic practice. He added that there is now ongoing litigation and it is his understanding has nothing to do with the process but is a condition of fraud. Dr. Tyler stated that he doesn't feel it's the type of thing the Board should be engaged in and asked how the members would like to handle it. Judge Duvaras stated that he would like to hear comments from the public.

Dr. Tyler asked for a motion regarding the reconsideration of Board's motion to reaffirm MUA as authorized under the Chiropractic Initiative Act; stating that it was not the intention of the Board to interfere in a criminal case or any ongoing enforcement case.

JUDGE DUVARAS MOVED TO RECONSIDER THE MARCH 1, 2007 MOTION TO REAFFIRM MUA AS AUTHORIZED UNDER THE CHIROPRACTIC INITIATIVE ACT. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Charles Davis, D.C., expressed his feelings and spoke in favor of MUA.

Ed Cremata, D.C., spoke in favor of MUA. He also expressed his feelings regarding the professionalism of the Board.

Roger Calton, Attorney at Law, expressed his feelings and spoke in favor of MUA.

Kristin Shultz, representing the California Chiropractic Association, expressed her feelings and spoke in favor of MUA.

Sarbjit Dhesi, D.C, expressed his feelings and spoke in favor of MUA. Dr. Dhesi referenced a case involving MUA and Worker's Compensation, noting that the judge in the case said that everything was legal and all was done correctly.

Ms. Powell recommended the Board make a motion to rescind its motion of March 1, 2007 reaffirming its position on MUA that it is in its scope of practice however, the rescinding of the motion does not change the Board's longstanding position that MUA is in within the scope of practice.

MR. CONRAN MOVED THAT THE BOARD RESCIND ITS MOTION OF MARCH 1, 2007 AND IN DOING SO ALSO AFFIRMS ITS BELIEF THAT MUA IS WITHIN THE SCOPE OF PRACTICE. THERE WAS NO SECOND MOTION. MOTION FAILED.

Ms. Powell recommended the Board make a motion that the motion of March 1, 2007 to reaffirm that MUA is within the scope of practice was in no way intended to interfere with the criminal case in San Joaquin County and the Board acknowledges that the appropriate means to have this affirmed as scope of practice is through the regulatory process.

JUDGE DUVARAS MOVED THE MOTION RECOMMENDED BY MS. POWELL. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Sunset Review Committee's Recommendation

Mr. Stiger reported on the nine recommendations that were made. Mr. Stiger commented on the recommendations that required the staff to take an action. Mr. Stiger addressed issue #6 reported that Board staff met with Office of Administrative Law (OAL) to discuss the fee regulation. The OAL director commented that he did not foresee any problem with the Board's fee regulation proposal. Mr. Stiger also stated that Board staff researched the fee structure to determine to the basis for the fees and a background paper has been prepared. Staff is waiting for the assignment of a regulation committee so that it can be presented for discussion and recommendation to the Board for a full vote. Mr. Stiger continued with issue #7 and reported that as part of the regulation review and revisions that need to be

made to the current regulations, Board staff is in the process of preparing a summary to be associated with the various citations. Mr. Stiger addressed issue #8 and reported that this item still needs to be researched and worked out with legal counsel. Mr. Stiger stated that at the next meeting he could provide additional reports on these issues.

Announcements

It was announced that the next Board meeting will be held on June 21, 2007. There was discussion on having a meeting of the committee's prior to the next Board meeting. The date will be determined.

New Business

Dr. Lerner commented that while researching how other Board's operate. He would like to see a discussion for periodic Board publication on the next Board agenda.

Public Comment

Dr. Clum expressed his concerns regarding previously approved institutions would be re-approved in 3-year cycles. Dr. Clum continued by stating that there is nothing in regulation or law to this effect. The institutions have cooperated and provided requested information. However, at this time, there is no regulation to support this behavior. He would like to suggest that while the Board is looking at other regulations, that this matter be taken into consideration for regulation and put it into place.

Jim Barris expressed his concerns regarding the renewal of his California license. He currently needs 288 Continuing Education units (CEU) in order to renew his inactive license. He currently has 204 CEU. He is requesting that he be able to renew his license with the provision that he obtain the remaining 84 CEU within 6 months. Mr. Barris also wanted to say the Genie in the CEU department is "a gem".

Carlos Negrete, general counsel to the World Chiropractic Alliance (WCA) and Dr. Terry Rondberg. He voiced his concern and upset over recent articles by the Sacramento Bee, placing the certain Board members integrity and commitment into question. He said that it should be noted that the Sacramento Bee was contacted by the WCA but refuse to correctly report the story.

Stephen Hartzell, Executive Officer with the California Physical Therapy Board. Mr. Hartzell commented that he wanted to introduce himself and let the Board know that routinely he or a staff person will be at our meetings and will be available if there are any common interests for discussion.

Following public comment, the Board recessed into closed session for deliberations on disciplinary matters and action on disciplinary decisions.

Dr. Tyler adjourned the public meeting at 4:33 p.m.

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF ADMINISTRATIVE COMMITTEE MEETING**

Notice is hereby given that a meeting of the Administrative Committee of the Board of Chiropractic Examiners will be held as follows:

**Tuesday September 11, 2007
9:30 a.m.
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA**CALL TO ORDER**

- Discussion and Possible Action on Board Member Administrative Manual
- Discussion and Possible Action on Ex Parte Policy re Board Member Communications
- Budget Update
- Discussion on Strategic Planning

**PUBLIC COMMENT****NEW BUSINESS – Future Agenda Items****ADJOURNMENT****Administrative Committee**

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

1. Using the prestige or influence of a State office for the appointee's private gain or advantage.
2. Using state time, facilities, equipment, or supplies for the appointee's private gain or advantage, or the private gain or advantage of another.
3. Using confidential information acquired by virtue of State involvement for the appointee's private gain or advantage, or the private gain or advantage of another.
4. Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act which the appointee would be required or expected to render in the regular course of hours of his or her State employment or as a part of the appointee's duties as a State officer.

Request for Grants

All requests for funding/contributions to Board projects shall be approved by the Board Chair.

Requests for such grants must be made by the Executive Officer at the Chair's direction. If a Board member makes an individual request, a copy of the request shall be forwarded to the Executive Officer as soon as possible.

The mechanism for receipt, management, and dispersal of funds shall be pre-arranged and approved by the Board.

Gifts from Licensees and Applicants (Board Policy)

A gift of any kind to Board members from licensees, applicants for licensure, continuing education providers or approved schools is not permitted. Gifts must be returned immediately.

Ex Parte Communications (Government Code Section 11430.10 et seq.)



The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members. If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call from an applicant under any circumstances or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter and inform the Executive Officer and the Board's legal counsel.

If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Executive Officer and the Board's legal counsel.

The Honoraria Prohibition (Government Code Section 89503) (FPPC Regulations, Title 2, Division 6)

As a general rule, members of the Board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state Board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Board members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Board member should decline all offers for honoraria for speaking or appearing before such entities.

BSA 60-Day Status Report

Exhibit C

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Licensing Committee of the Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008
(Upon Conclusion of the CE Committee Meeting)
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA**CALL TO ORDER****PUBLIC COMMENT****Discussion and Possible Action**

- Proposed Procedure for Approving Licenses

Discussion Only

- Ongoing Review of Chiropractic Colleges

FUTURE AGENDA ITEMS**PUBLIC COMMENT****ADJOURNMENT****LICENSING COMMITTEE**

Judge James Duvaras, Retired, Chair
Richard Tyler, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**NOTICE OF BOARD MEETING****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 24, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update



BSA 60-Day Status Report

Exhibit D

DUTY STATEMENT

GS 907T (REV. 04/02)

SHADED AREA FOR HUMAN RESOURCES ONLY

1. OFFICE OR CLIENT AGENCY Board of Chiropractic Examiners		POSITION NUMBER (Agency - Unit - Class - Serial) 620-110-5157-008	
2. UNIT NAME AND CITY LOCATED Administration, Sacramento		3. CLASS TITLE Staff Services Analyst	
4. WORKING HOURS/SCHEDULE TO BE WORKED 9:00 a.m. to 5:30 p.m.		5. SPECIFIC LOCATION ASSIGNED TO Sacramento	
6. PROPOSED INCUMBENT (If known)		7. CURRENT POSITION NUMBER (Agency - Unit - Class - Serial) 620-110-5157-008	

EFFECTIVE DATE

1-2-08

YOU ARE A VALUED MEMBER OF THE DEPARTMENT'S TEAM. YOU ARE EXPECTED TO WORK COOPERATIVELY WITH TEAM MEMBERS AND OTHERS TO ENABLE THE DEPARTMENT TO PROVIDE THE HIGHEST LEVEL OF SERVICE POSSIBLE. YOUR CREATIVITY AND PRODUCTIVITY ARE ENCOURAGED. YOUR EFFORTS TO TREAT OTHERS FAIRLY, HONESTLY AND WITH RESPECT ARE IMPORTANT TO EVERYONE WHO WORKS WITH YOU.

8. BRIEFLY (1 - 3 sentences) DESCRIBE THE POSITION'S ORGANIZATIONAL SETTING AND MAJOR FUNCTIONS

Under the supervision of the Executive Officer, the Staff Services Analyst performs a wide variety of duties including, but not limited to, licensing, procurement, account payables, travel activities and general administrative duties of the Board.

9. Percentage of time performing duties

10. Indicate the duties and responsibilities assigned to the position and the percentage of time spent on each. Group related tasks under the same percentage with the highest percentage first. (Use additional sheet if necessary)

30%

ESSENTIAL FUNCTIONS

Serving as the Board Member Liaison, the SSA performs the following duties:

- Researches board regulations, historical facts and current chiropractic issues to provide information concerning Board meeting agenda items and for inclusion into the board meeting packets.
- Provide analytical support to the Board's (8) policy committees.
- Prepares written analysis of proposed policy decisions. Conducts research into issues raised by the Board and presents recommendations to the Acting Executive Officer for resolution.
- Drafts meeting notices and agendas for submittal to the Board Members, all staff, the general public and for publication on the Board's web site.
- Coordinates and collects exhibit materials from staff and uses the binding machine in order to assemble the Board meeting packets for submittal to the Board members, staff and the general public attending the meeting.
- Researches meeting sites for cost comparisons to reserve for Board meetings and makes appropriate reservations for Board members and staff for lodging by using the Internet and present list of contacts. Handles all logistics and placement of recording equipment for official Board meeting records and the production of Board meeting minutes.
- Transcribes all Board meeting minutes by using Dictaphone equipment and computer word programs and distributes Board meeting minutes via email to Board Members and executive staff for approval.

45%

Processes applications for licensure to practice chiropractic which includes:

- analyzing applicants' qualifications in accordance with the requirements set forth in the California Chiropractic Initiative Act, the California Code of Regulations, and the standards established by the Counsel on Chiropractic Education (CCE), chiropractic college requirements and results of National Board examinations.
- forwards fingerprint cards to the Department of Justice for processing.
- Independently communicates via email, written correspondence and telephone to inquiries from applicants, the public, other governmental agencies and chiropractic regulatory boards throughout the nation regarding the Board's licensing process.
- entering new licensee data/information into the Teale Data System.

5%

Processes the more complex licensing and examination-related workload, including reciprocity applications by

- researching applicants' chiropractic educational qualifications and verifying current licensure from states from which they are reciprocating.
- reviewing the conviction histories and/or disciplinary actions taken in other states.

DUTY STATEMENT

GS 907T (REV. 04/02)

9. Percentage of time performing duties	10. Indicate the duties and responsibilities assigned to the position and the percentage of time spent on each. Group related tasks under the same percentage with the highest percentage first. (Use additional sheet if necessary)
5%	<p>Serves as liaison with the Board's testing service in the administration of the California Law Examination, which involves:</p> <ul style="list-style-type: none"> • providing the testing service with all pertinent information regarding applicants eligible for the examination • assisting applicants requiring special accommodations to take the exam • reviewing requests and chiropractic college verifications of the need for special accommodations
2%	<p>In order to maintain inventory, equipment and supplies the incumbent performs the following duties, in accordance with the above guidelines:</p> <ul style="list-style-type: none"> • Creates and maintains all necessary business services files for vendors, std.204's, purchase orders, cal-card purchases etc. and contact lists. Keeps an expense accounting of all equipment and supplies purchased using Microsoft Excel. • Prepares stock received reports, inventory reports in order to track all supplies and equipment the Board purchases and submits them to DGS-CFS for budget purposes. • Inventories and orders all office supplies and equipment using current vendors lists and CMAS contacts.
3%	<p>In order to serve as Records Management Coordinator and Waste Management Coordinator:</p> <ul style="list-style-type: none"> • Prepares record retention schedules based on previous years schedules and DGS Records Management policies. • Prepares record transfer lists in order to send files, documents, electronic data, etc. to the Records Storage facility for them to store based on the Board's retention schedule or for destruction. • Prepares the Board's annual Mandated Waste Diversion Report to be submitted to the California Integrated Waste Management Board's via their web site to ensure compliance with AB 75.
8%	<p>In order to assist in the procurement activities of the Board in accordance with the SAM, CAM, PAM and the DGS Contracts Manual, the SSA performs the following duties under the direction of the Executive Officer:</p> <ul style="list-style-type: none"> • Initiates and prepares vendor purchases by completing the std. 65 template in order to expedite delivery of purchase requisitions, sub-purchase orders, printing and reproduction orders. • Investigates and resolves order discrepancies based on items received or billings by contacting the vendor via phone or in writing. • Assists in the preparation of contracts and interagency agreements for service, equipment maintenance and repair by researching vendors through DGS's CMAS and making recommendations to the Executive Officer and monitors billings in order to advise the Executive Officer on contracts exceeding the budgeted authority and then amends contracts to complete the service requested. • Serves as liaison with DGS-CFS Accounts Payable Unit for invoice preparation, including payment, tracking and resolving discrepancies by obtaining authorization for payment from executive staff, photo copying documents for submittal to DGS, tracking payments in the excel database and contacting vendors about discrepancies via the telephone and in writing. • Requests vendor checks for purchases the Board is unable to make utilizing the purchase order system or cal-card and mails the checks to the appropriate vendor.
2%	<p>STATEMENT OF ECONOMIC INTEREST FILING OFFICER</p> <p>Coordinate annual, assuming office, and leaving office filing process; review regulations; serve as liaison between the Board and Fair Political Practices Commission (FPPC).</p> <ul style="list-style-type: none"> • Respond to all inquiries and requests from Executive Office, FPPC, and filers. • Send required COI statements to FPPC, work with FPPC liaison to reconcile all filers. • Review all COI statements for completeness and accuracy.

9. Percentage of time performing duties	10. Indicate the duties and responsibilities assigned to the position and the percentage of time spent on each. Group related tasks under the same percentage with the highest percentage first. (Use additional sheet if necessary)
	<p>MARGINAL FUNCTIONS</p> <p>Coordinates with board members, executive staff, and state travel consultants in order to secure travel arrangements and travel cost disbursements by</p> <ul style="list-style-type: none"> • Researching and making arrangements for all transportation and travel accommodations for Board related travel, including conferences, school site visits etc. • Completing and submitting travel claims (std. 637) to DGS-CFS for payment. • Disbursing the checks to staff and the Board members through the mail. • Filing all staff and Board Member travel claims. <p>KNOWLEDGE, SKILLS AND ABILITIES:</p> <p>Knowledge of: English grammar and punctuation; principles and practices of public administration; financial record keeping; and office and automotive equipment and supplies.</p> <p>Ability to: Communicate effectively; learn rapidly; follow directions; analyze data accurately; reason logically; maintain the confidence and cooperation of those contacted during the course of work; and utilize good work habits.</p> <p>DESIRABLE QUALIFICATIONS:</p> <p>SPECIAL PERSONAL CHARACTERISTICS</p> <ul style="list-style-type: none"> • Dependable attendance and punctuality • Proficiency with Microsoft Windows and Office applications, i.e., Word and Excel <p>INTERPERSONAL SKILLS</p> <ul style="list-style-type: none"> • Excellent telephone and people skills • Ability to work both independently and as a team member • Ability to interact with internal and external customers in a courteous, tactful and professional manner • Effective communication skills <p>WORK ENVIRONMENT, PHYSICAL OR MENTAL ABILITIES:</p> <ul style="list-style-type: none"> • Requires prioritizing work and meeting frequent deadlines • Occasional statewide travel for meetings • Requires occasional transcription from tape-recorded media • Professional office environment; appropriate attire • Frequent use of a personal computer and related software applications at a workstation

11. SUPERVISOR'S STATEMENT: I HAVE DISCUSSED THE DUTIES OF THE POSITION WITH THE EMPLOYEE		
SUPERVISOR'S NAME (Print) Brian J. Stiger	SUPERVISOR'S SIGNATURE <i>Brian J. Stiger</i>	DATE 11/2/08
12. EMPLOYEE'S STATEMENT: I HAVE DISCUSSED WITH MY SUPERVISOR THE DUTIES OF THE POSITION AND HAVE RECEIVED A COPY OF THE DUTY STATEMENT		
The statements contained in this duty statement reflect general details as necessary to describe the principal functions of this job. It should not be considered an all-inclusive listing of work requirements. Individuals may perform other duties as assigned, including work in other functional areas to cover absence of relief, to equalize peak work periods or otherwise to balance the workload.		
EMPLOYEE'S NAME (Print)		DATE

BSA 60-Day Status Report

**Exhibit
F**

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Administrative Committee of the Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the MUA Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**Call to Order****Discussion and Possible Action**

- Interagency Agreement with Department of Consumer Affairs (DCA)

Discussion and Possible Action

- State Issued E-mail Addresses for Board Members

Discussion and Possible Action

- Board Member Administrative Procedure Manual Updates

Discussion

- Investigator Contracts

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ADMINISTRATIVE COMMITTEE**

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Administrative Committee
March 27, 2008
400 R Street, Room 101
Sacramento, CA 95814**

Committee Members Present

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Mr. Conran called the meeting to order at 9:32 a.m.

Roll Call

Dr. Lubkin called the roll. All committee members were present.

Board Member Administrative Procedure Manual Updates

Mr. Stiger recommended minor updates to the manual to reflect new officers, committees, deletion of a cited statute, and a new revision date for the manual.

MOTION: DR. LUBKIN MOVED THAT COMMITTEE ADOPT THE RECOMMENDED CHANGES TO THE MANUAL.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Interagency Agreement with the Department of Consumer Affairs (DCA)

Mr. Stiger recommended that the Board enter into a two year contract with DCA for personnel, fiscal, legal, public affairs, and IT services. He stated that these services are important to daily operations and that DCA has provided outstanding services over the course of the current contract.

Mr. Conran provided a historical perspective of the services that DCA has provided over the years and he recommended support of a proposed contract.

Dr. Lerner voiced his support for the services of DCA and the proposed contract.

Dr. Lubkin added his full support of the proposed contract.

Public Comment:

Dr. Charles Davis, International Chiropractic Association of California (ICAC) asked if the contract would authorize DCA to override any Board policies. Mr. Conran stated the purpose of the contract is to provide consulting services and that the Board continues to maintain the authority to develop and implement policies.

MOTION: DR. LERNER MOVED THAT THE COMMITTEE AUTHORIZE THE EXECUTIVE OFFICER TO CONTINUE TO NEGOTIATE AND ENTER INTO A CONTRACT WITH DCA AND PRESENT A COPY TO THE FULL BOARD UPON COMPLETION.

MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

State Issued E-mail Addresses for Board Members



Mr. Stiger presented the Bureau of State Audits' recommendation to establish e-mail accounts for all Board members.

Dr. Lerner supports the concept and voiced concerns about members of the public sending e-mails to Board members, raises the possibility of Bagley-Keene Act violations. Dr. Lubkin agreed.

Mr. Conran recommended approval of concept and asked that staff remind Board members how to protect themselves if they receive a questionable e-mail from the public.

MOTION: DR. LUBKIN MOVED THAT THE PROPOSAL TO ISSUE BOARD MEMBERS STATE ISSUED E-MAIL ADDRESSES BE RECOMMENDED TO THE FULL BOARD FOR APPROVAL.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Investigator Contracts

Mr. Stiger announced that he terminated two private investigator contracts because the individuals were not licensed. Further, he stated that the Enforcement Committee supported a proposal for the Board to establish its own Special Investigator positions and if the Board moved in this direction the two remaining contracts would expire on June 30, 2008.

Mr. Conran expressed his concern that previous management entered into contracts with unlicensed individuals and praised the Executive Officer for taking swift action to resolve.

Public Comment:

Dr. Davis asked Mr. Stiger what the backlog was on consumer complaints, how many complaints would be assigned to investigators and what is the timeline on hiring the investigators.

Mr. Stiger stated the complaint backlog amounts to about 600 complaints and the investigator proposal would take some time to bring the investigators on board. He said if AB 450 is passed the Board would immediately begin refilling positions to address the backlog.

Future Agenda Items:

Dr. Lerner reminded Mr. Stiger to ensure the revised manual includes the revision date to ensure the public references the most current version of the Board Member Administrative Manual.

ADJOURNMENT

Mr. Conran adjourned the meeting at 9:55 a.m.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING****Government Relations Committee**

May 7, 2008

1:30 p.m.

**2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA**CALL TO ORDER****Approval of Minutes**

- March 27, 2008

Public Comment**Discussion and Possible Action**

- Board Member Use of State Issued E-Mail Accounts

Discussion and Possible Action

- Status of Implementing the March 25, 2008 Bureau of State Audits' Recommendations and 60 Day Status Report

Discussion and Possible Action

- Status of Implementing 2006 Sunset Review Report Recommendations

Public Comment**Future Agenda Items****ADJOURNMENT****GOVERNMENT RELATIONS COMMITTEE**

Jim Conran, Chair
Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Board of Chiropractic Examiners

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**NOTICE OF BOARD MEETING****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102
Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 24, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update

Government Relations Committee - Discussion and Possible Action

- Status of Implementing the March 25, 2008, Bureau of State Audits' Recommendations and 60 Status Report
- Board Member Use of State Issued E-Mail Accounts



Public Relations Committee – Discussion and Possible Action

- Contract with the Department of Consumer Affairs for Public Relations Services

Legislative Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Legislative Committee Agenda.

Strategic Planning Committee – Discussion and Possible Action

The Board may take action on any agenda item listed on the attached Strategic Planning Committee Agenda.

REGULATIONS UPDATE – Discussion and Possible Action

- Cite and Fine
- Letter of Admonishment
- Manipulation Under Anesthesia

Board Meeting Schedule for 2008 – Discussion and Possible Action

Public Comment

Future Agenda Items

CLOSED SESSION:

Discussion on Pending Litigation

Pursuant to California Government Code Section 11126(e)

- ***David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes***
Sacramento County Superior Court, Case No. 07AS03721
- ***Catherine Hayes v. Board of Chiropractic Examiners***
Department of Fair Employment and Housing and Department of Industrial Relations Complaint

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions

Pursuant to California Government Code Section 11126(c)(3)

OPEN SESSION: Announcements re Closed Session

Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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BSA 60-Day Status Report

Exhibit G

Board of Chiropractic Examiners

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BOARD OF CHIROPRACTIC EXAMINERS MEETING MINUTES Administrative Committee March 27, 2008 400 R Street, Room 101 Sacramento, CA 95814

Committee Members Present

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Mr. Conran called the meeting to order at 9:32 a.m.

Roll Call

Dr. Lubkin called the roll. All committee members were present.

Board Member Administrative Procedure Manual Updates



Mr. Stiger recommended minor updates to the manual to reflect new officers, committees, deletion of a cited statute, and a new revision date for the manual.

MOTION: DR. LUBKIN MOVED THAT COMMITTEE ADOPT THE RECOMMENDED CHANGES TO THE MANUAL.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Members of the Board

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Judge James Duvaras, Ret., Public Member
Jim Conran, Public Member
Richard Tyler, D.C., Professional Member

Executive Officer

Brian J. Stiger

This procedure manual is a general reference including a review of some important laws, regulations, and these basic Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency. The Chiropractic Initiative Act of 1922 (the Act) will be referenced and summarized throughout this procedure manual.

This Administrative Procedure Manual, regarding Board Policy, can be amended by four affirmative votes of any current or future Board.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

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BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

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BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 1. Introduction

Overview

The Board of Chiropractic Examiners (Board) was created on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922.

The Act states it is... "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith..."

The powers and authority of the Board is specifically defined in Section 4 of the Act. In general, the board is a policy-making and administrative review body comprised pursuant to the provisions of Section 1 of the Act, comprised of seven members, five professional and two public, each appointed by the Governor. The Board's paramount purpose is to protect California consumers through the enforcement of the Act, other applicable laws and the California Code of Regulations related to the Practice of Chiropractic, identified herein as the Board's regulations.

State of California Acronyms

ALJ	Administrative Law Judge
AG	Office of the Attorney General
APA	Administrative Procedure Act
B&P	Business and Professions Code
CATS	Computer Assisted Testing Service
CCCP	California Code of Civil Procedure
CCR	California Code of Regulations
CLEAR	Council on Licensure Enforcement and Regulations
DAG	Deputy Attorney General
DOF	Department of Finance
DOI	Department of Insurance
DPA	Department of Personnel Administration
SAM	State Administrative Manual
SCIF	State Compensation Insurance Fund
SPB	State Personnel Board
VCGCB	Victim Compensation and Government Claims Board

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

General Rules of Conduct

All Board members shall act in accordance with their oath of office, and shall conduct themselves in a courteous, professional and ethical manner at all times. The Board serves at the pleasure of the governor, and shall conduct their business in an open manner, so that the public that they serve shall be both informed and involved, consistent with the provisions of the Bagley-Keene Open Meeting Act and all other governmental and civil codes applicable to similar boards within the State of California.

- ❖ Board members shall comply with all provisions of the Bagley-Keene Open Meeting Act.
- ❖ Board members shall not speak or act for the Board without proper authorization.
- ❖ Board members shall not privately or publicly lobby for or publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Board.
- ❖ Board members shall not discuss personnel or enforcement matters outside of their official capacity in properly noticed and agendized meetings or with members of the public or the profession.
- ❖ Board members shall never accept gifts from applicants, licensees, or members of the profession while serving on the Board.
- ❖ Board members shall maintain the confidentiality of confidential documents and information related to board business.
- ❖ Board members shall commit the time and prepare for Board responsibilities including the reviewing of board meeting notes, administrative cases to be reviewed and discussed, and the review of any other materials provided to the board members by staff, which is related to official board business.
- ❖ Board members shall recognize the equal role and responsibilities of all Board members.
- ❖ Board members shall act fairly, be nonpartisan, impartial, and unbiased in their role of protecting the public and enforcing the Chiropractic Initiative Act.
- ❖ Board members shall treat all consumers, applicants and licensees in a fair, professional, courteous and impartial manner.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

- ❖ Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- ❖ Board members shall not use their positions on the Board for personal, familial, or financial gain. Any employment subsequent to employment as a board member shall be consistent with Executive Order 66-2.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 2. Board Members & Meeting Procedures

Membership (§1 Initiative Act)

The Board consists of seven members appointed by the Governor. Each member must be a citizen of the United States and have been a resident of California for five years. Two members must be public members. Each licensee member must have at least five years of licensure in this state prior to appointment. Each licensee member must have pursued a resident course in an approved chiropractic school or college, and must be a graduate thereof and hold a diploma therefrom.

No more than two persons can serve simultaneously as members of the Board whose first diplomas were issued by the same school or college of chiropractic. Nor can more than two members be residents of any one county of the state. No person is eligible for appointment to the Board who is currently or within one year of holding a position as an administrator, policy Board member, or a paid employee of any chiropractic school or college.

Board Meetings and Offices (§6 Initiative Act)

The full Board must meet at least twice each calendar year.

The Board's office is located in Sacramento. The Board may establish additional offices in Los Angeles and San Francisco.

Board Meetings (Government Code Section 11120 et seq. - Bagley-Keene Open Meeting Act)

The Board, as a statement of policy, shall comply with the provisions of the Bagley-Keene Open Meeting Act, and conduct their business in accordance with Robert's Rules of Order, as long as that does not conflict with any superseding laws or regulations.

Due notice of each meeting and the time and place thereof must be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

The Board may call a special meeting at any time in the manner provided by the Bagley-Keene Open Meeting Act, Government Code Section 11125.4.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Quorum

(§3 Initiative Act)

A majority of the Board (four members) will constitute a quorum. An affirmative vote of four members of the Board is required to carry any motion or resolution, to adopt any rule, or to authorize the issuance of any license provided for in the Act.

Board Member Attendance at Board Meetings

(Board Policy)

Being a member of the Board is a serious commitment to the governor, and the people of the State of California. Board members shall attend a minimum of 75% of all scheduled assigned committee meetings and full session Board meetings. In extraordinary circumstances, the Chair may excuse a Board member from this obligation. If a member is unable to attend, he or she must contact the Board Chair or the Executive Officer, and provide a written explanation of their absence.

Public Attendance at Board Meetings

(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This Act governs meetings of the state regulatory Boards and meetings of committees of those Boards where the committee consists of more than two members. It specifies meeting notice, agenda requirements, and prohibits discussing or taking action on matters not included on the agenda. If the agenda contains matters which are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Agenda Items

(Board Policy)

Board members may submit agenda items for a future Board meeting during the "New Business" section of a Board meeting or directly to the Board Secretary 15 days prior to a Board meeting. To the extent possible, the Board Secretary will calendar each Board member's request on a future Board meeting.

In the event of a conflict, the Board Secretary will discuss the proposed agenda item with the Board Chair, and the Board Chair shall make the final decision. The Board Secretary will work with the Executive Officer to finalize the agenda.

If a Board member requests an item be placed on the agenda, and that request can not be complied with at the immediate upcoming meeting, then

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

the requested agenda item shall be placed on the next regularly scheduled meeting or into committee and shall never be postponed more than two meetings prior from being placed on the agenda and open for discussion by the Board.

Notice of Meetings

(Government Code Section 11120 et seq.)

Meeting notices, including agendas, for Board meetings will be sent to persons on the Board's mailing list at least 10 calendar days in advance, as specified in the Bagley-Keene Open Meeting Act. The notice shall include a staff person's name, work address, and work telephone number who can provide further information prior to the meeting.

Notice of Meetings Posted on the Internet

(Government Code Section 11125 et seq.)

Meeting notices shall be posted on the Board's web site at least 10 days in advance of the meeting, and include the name, address, and telephone number of staff who can provide further information prior to the meeting.

Mail Ballots

(Government Code Section 11500)

The Board must approve any proposed decision or stipulation before the formal discipline becomes final and the penalty can take effect.

Proposed stipulations and decisions are mailed to each Board member for his or her vote. For stipulations, a background memorandum from the assigned deputy attorney general accompanies the mail ballot. A two-week deadline generally is given for the mail ballots for stipulations and proposed decisions to be completed and returned to the Board's office.

Holding Disciplinary Cases for Board Meetings

(Board Policy)

When voting on mail ballots for proposed disciplinary decisions or stipulations, a Board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot must be marked "hold for discussion," and the reason for the hold must be provided on the mail ballot. This allows staff the opportunity to prepare information being requested.

If two votes are cast to hold a case for discussion, the case is set aside and not processed (even if four votes have been cast on a decision). Instead the

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

case is scheduled for a discussion during a closed session at the next Board meeting.

If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

If the Board member is comfortable voting on the matter, but wishes to discuss the policy behind the decision or case, the ballot should be marked "Policy Issue for Discussion. I have voted above. Issue: _____." The Executive Officer will respond directly to the member. If still unresolved or if the matter is to be referred to the Board, the policy issue will be placed on the agenda for discussion at the next Enforcement Committee Meeting.

Record of Meetings (Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting.

Board minutes must be approved or disapproved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting. The recordings of each board meeting shall be maintained and not destroyed.

Tape Recording (Government Code Section 11124.1(b))

The meeting may be audio and/or video tape recorded by the public or any other entity in accordance with the Bagley-Keene Open Meeting Act, the members of the public may tape record, videotape or otherwise record a meeting unless they are disruptive to the meeting and the Chair has specifically warned them of their being disruptive, then the Chair may order that their activities be ceased.

Meeting Rules (Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act or other state laws or regulations), as a guide when conducting the meetings. Questions of order are clarified by the Board's legal counsel.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Public Comment (Board Policy)

Public comment is always encouraged and allowed, however, if time constraints mandate, the comments may be limited to three minutes per person. Due to the need for the Board to maintain fairness and neutrality when performing its adjudicative function, the Board shall not receive any information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending or criminal administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with any information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person must be instructed to refrain from making such comments.
2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:
 - a. Where the allegation involves errors of procedure or protocol, the Board may designate either its Executive Officer or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
 - b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.
3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting. The Board accepts the conditions established in the Bagley-Keene Open Meeting Act and appreciates that at times the public may disapprove, reprimand, or otherwise present an emotional presentation to the Board, and it is the Board's duty and obligation to allow that public comment, as provided by law.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 3. Travel & Salary Policies & Procedures

Travel Approval (Board Policy)

Board members shall receive Executive Officer approval for all travel and salary or per diem reimbursement, except for regularly scheduled Board, committee, and conference meetings to which a Board member is assigned.

Travel Arrangements (Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Board liaison on lodging accommodations.

Out-of-State Travel (SAM Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims (SAM Section 700 et seq.)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Board Liaison maintains these forms and completes them as needed.

The Executive Officer's travel and per diem reimbursement claims shall be submitted to the Board Chair for approval.

It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than thirty days following the trip.

Salary Per Diem (\$1 Initiative Act and B&P Code Section 103)

Each member of the Board shall receive a per diem in the amount provided in Section 103 of the Business and Professions (B&P) Code. Board members fill non-salaried positions, but are paid \$100 per day for each meeting day and are reimbursed travel expenses.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by the B&P Code Section 103. Board members are paid out of the funds of the Board, as provided for within the Chiropractic Initiative Act.

In relevant part, B&P Code Section 103 provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Salary Per Diem (Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member.

Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed the Executive Officer shall be notified and approval shall be obtained from the Board Chair prior to Board member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board or committee meeting until that meeting is adjourned.

If a member is absent for a portion of a meeting, hours are then reimbursed for time actually spent. Travel time is not included in this component.

3. For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board Chair. This may also include, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, such as the Federation of Chiropractic Licensing Boards (FCLB). Work also includes preparation time for Board or committee meetings and reading and deliberating mail ballots for disciplinary actions.
4. Reimbursable work does not include miscellaneous reading and information gathering unrelated board business and not related to any

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

meeting, preparation time for a presentation and participation at meetings not related to official participation of the members duties with the Board.

5. Board members may participate on their own (i.e., as a citizen or professional) at an event or meeting but not as an official Board representative unless approved in writing by the Chair. Requests must be submitted in writing to the Chair for approval and a copy provided to the Executive Officer. However, Board members should recognize that even when representing themselves as "individuals," their positions might be misconstrued as that of the Board.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 4. Selection of Officers & Committees

Officers of the Board (§3 Initiative Act)

The Board shall elect at the first meeting of each new year a Chair, Vice Chair and Secretary from the members of the Board.

Election of Officers (§3 Initiative Act)

Elections of the officers shall occur annually at the January meeting of the Board.

Officer Vacancies (Board Policy)

If an office becomes vacant during the year, the Chair may appoint a member to fill the vacancy for the remainder of the term until the next annual election.

If the office of the Chair becomes vacant, the Vice Chair shall assume the office of the Chair. Elected officers shall then serve the remainder of the term.

Board Member Addresses (Board Policy)

Board member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority of the individual Board member. A roster of Board members is maintained for public distribution on the Board's web site using the Board's address and telephone number.

Board Member Written Correspondence and Mailings (Board Policy)

All correspondence, press releases, articles, memoranda or any other communication written by any Board member in his or her official capacity must be provided to the Executive Officer for reproduction and distribution. The Executive Officer will retain a copy in a chronological file and distribute the written material.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Request to Access Licensee or Applicant Records (Board Policy)

No Board member may access a licensee's, or applicant's file without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the Board's office at any time.

Communications: Other Organizations/Individuals/Media (Board Policy)

All communications relating to any Board action or policy to any individual or organization, or a representative of the media shall be made only by the Board Chair, his or her designee, or the Executive Officer. Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact.

Committee Appointments (Board Policy)

The Chair shall establish committees, whether standing or special, as he or she deems necessary.

The composition of the committees and the appointment of the members shall be determined by the Board Chair in consultation with the Vice Chair, Secretary, and the Executive Officer.

Standing Committees (Board Policy)

The Board has eight standing committees:

1. Continuing Education Committee

The Continuing Education Committee recommends regulations for mandatory continuing education and overseeing the Continuing Education Program, which includes program administration, continuing education providers' evaluation, waiver requests review, and conducting regular at-random and continuing education audits.

2. Enforcement Committee

The purpose of the Enforcement Committee is to continually seek ways to improve the Board's enforcement activities. The committee shall consist of two Board members. Meetings will be held as necessary.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

3. Government Relations Committee

The Administrative Committee continually reviews policies, procedures, budget, personnel, accounting, and departmental issues. The Administrative Committee works directly with the Executive Officer and staff to monitor budget expenditures, trends, and the Contingent Fund levels.

The Committee shall monitor individual line item expenditure and look for anomalies with a three year pattern for purposes of preparing a budget change proposal to correct either an under or over expenditure.

4. Legislation/Regulation Committee

Proposes regulations that enhance the Board's role as a regulatory agency that protects the public. The committee will review and recommend positions on bills that affect the Board.

The following classification system will be used by the committee in recommending Board positions:

1. **Support:** The Board supports the current version of the bill.
2. **Support if Amended:** The Board generally supports the concept or intent of the bill.
3. **Oppose:** The Board is opposed to the current version of the bill.
4. **Oppose Unless Amended:** The Board is opposed to the bill but is willing to work with the author and sponsor of the bill to resolve the Board's concerns.

Watch: The Board has some interest in the bill because it potentially may affect the work of the Board.

5. Licensing Committee

Proposes policies and standards regarding chiropractic colleges, doctors of chiropractic and satellite offices.

6. Public Relations Committee

Develops strategies to communicate with the public through various forms of media.

7. Scope of Practice Committee

Reviews and processes positions on scope of practice issues.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

8. Strategic Planning Committee

Develops draft Strategic Plans and monitors the BCE's progress in achieving goals and objectives.

Committee Meetings (Board Policy)

Each of these committees is comprised of at least two Board members and staff, who provide technical and administrative input and support. The committees are an important venue for ensuring that staff and Board members share information and perspectives in crafting and implementing strategic objectives.

The Board's committees allow Board members, stakeholders and staff to discuss and conduct problem solving on issues related to the Board's strategic goals. They also allow the Board to consider options for implementing components for the strategic plan.

The committees are charged with coordinating Board efforts to reach Board goals and achieving positive results on its performance measures.

The Board Chair designates one member of each committee as the committee's chairperson.

The chairperson coordinates the committee's work, ensures progress toward the Board's priorities, and presents reports at each meeting.

During any public committee meeting, comments from the public are encouraged, and the meetings themselves are frequently public forums on specific issues before a committee. These meetings shall also be run in accordance with the Bagley-Keene Open Meeting Act.

Attendance at Committee Meetings (Board Policy and Government Code Section 11122.5 et seq.)

If a Board member wishes to attend a meeting of a committee of which he or she is not a member, the Board member must obtain permission from the Board Chair to attend and must notify the committee chair and staff.

Board members who are not members of the committee that is meeting cannot vote during the committee meeting.

If there is a quorum of the Board at a committee meeting, Board members who are not members of the committee must sit in the audience and cannot participate in committee deliberations.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

It is also important to note that any time more than two Board members attend a Board committee meeting, that committee must have been publicly noticed.

The Board's legal counsel works with the Executive Officer to assure any meeting that fits the requirements for a public meeting is appropriately noticed.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 5. Board Administration & Staff

Executive Officer (§3 Initiative Act)

The Board employs an Executive Officer and establishes his/her salary in accordance with the State law.

The Executive Officer is responsible for the financial operations and integrity of the Board, and is the official custodian of records. The Executive Officer is an at will employee, who serves at the pleasure of the Board, and may be terminated, with or without cause, in accordance with the provisions of the Bagley-Keene Open Meeting Act.

Board Administration (Board Policy)

Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Officer as an instrument of the Board.

Executive Officer Evaluation (Board Policy)

At the first Board meeting of each fiscal year or at any time thereafter as determined by the Board, the Executive Officer is evaluated by the Board Chair during a closed session. Board members provide information to the Chair on the Executive Officer's performance in advance of this meeting.

Board Staff (§4 Initiative Act)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements.

Because of this complexity, the Board delegates this authority and responsibility for management of the civil service staff to the Executive Officer as an instrument of the Board.

Board members may express any staff concerns to the Executive Officer but shall refrain from involvement in any civil service matters. Board members shall not become involved in the personnel issues of any state employee.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Board Budget (Board Policy)

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislature.

Strategic Planning (Board Policy)

The Administrative Committee shall have overall responsibility for the Board's Strategic Planning Process and shall assist staff in the monitoring and reporting of the strategic plan to the Board.

Communications with Other Organizations & Individuals (Board Policy)

All communications relating to any Board action or policy to any individual or organization shall be made only by the Chair of the Board, his or her designee, or the Executive Officer.

Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact immediately.

All correspondence shall be issued on the Board's standard letterhead and will be disseminated by the Executive Officer's office.

Business Cards (Board Policy)

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

CHAPTER 6. Other Policies & Procedures

Board Member Disciplinary Actions (Board Policy)

If a board member violates any provision of the Administrative Procedure Manual, the Chair will provide in writing, notice to the member of the violation. If the member disagrees with the notice, the board member must provide a reply in writing. After giving the board member an opportunity to respond to the notice, the Chair, at his/her discretion may meet in person or discuss by telephone with the board member to discuss the violation. The Chair may ask a third person to be present during the meeting. If the matter is not resolved at the end of the meeting or it is resolved but the board member continues to violate the procedures in the manual, the Chair may agendize at the next board meeting an item asking for censure of the board member.

If the violation concerns the Chair's conduct, the Vice-Chair will handle the matter.

Terms and Removal of Board Members (\$2 Initiative Act)

The Governor shall appoint the members of the Board. Each appointment shall be for the term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only. Each member shall serve until his successor has been appointed and qualified or until one year has elapsed since the expiration of his term whichever first occurs.

No person shall serve more than two consecutive terms on the Board nor be eligible for appointment thereafter until the expiration of four years from the expiration of such second consecutive term, effective January 2, 1974. The Governor may remove a member from the Board after receiving sufficient proof of the inability or misconduct of said member.

Resignation of Board Members (Government Code Section 1750 (b))

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the Governor's Office with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the Board Chair and the Executive Officer.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Conflict of Interest

(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision.

Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Licensees and Applicants

(Board Policy)

Board members shall not intervene on behalf of a licensee or applicant for licensure for any reason. They should forward all contacts or inquiries to the Executive Officer.

Contact with Respondents

(Board Policy)

Board members should not directly participate in complaint handling and resolution or investigations.

To do so would subject the Board member to disqualification in any future disciplinary action against the licensee. If a Board member is contacted by a respondent or his/her attorney, the Board member should refer the individual to the Executive Officer.

Service of Legal Documents

(Board Policy)

If a Board member is personally served as a party in any legal proceeding related to his or her capacity as Board member, he or she must contact the Executive Officer immediately.

Serving as an Expert Witness

(Executive Order 66.2)

Pursuant to Executive Order 66-2, no employment, activity, or enterprise shall be engaged in by any gubernatorial appointee which might result in, or create the appearance of resulting in any of the following:

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

1. Using the prestige or influence of a State office for the appointee's private gain or advantage.
2. Using state time, facilities, equipment, or supplies for the appointee's private gain or advantage, or the private gain or advantage of another.
3. Using confidential information acquired by virtue of State involvement for the appointee's private gain or advantage, or the private gain or advantage of another.
4. Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act which the appointee would be required or expected to render in the regular course of hours of his or her State employment or as a part of the appointee's duties as a State officer.

Request for Grants

All requests for funding/contributions to Board projects shall be approved by the Board Chair.

Requests for such grants must be made by the Executive Officer at the Chair's direction. If a Board member makes an individual request, a copy of the request shall be forwarded to the Executive Officer as soon as possible.

The mechanism for receipt, management, and dispersal of funds shall be pre-arranged and approved by the Board.

Gifts from Licensees and Applicants (Board Policy)

A gift of any kind to Board members from licensees, applicants for licensure, continuing education providers or approved schools is not permitted. Gifts must be returned immediately.

Ex Parte Communications (Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members. If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call from an applicant under any circumstances or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter and inform the Executive Officer and the Board's legal counsel.

If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Executive Officer and the Board's legal counsel.

The Honoraria Prohibition (Government Code Section 89503) (FPPC Regulations, Title 2, Division 6)

As a general rule, members of the Board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state Board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Board members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Board member should decline all offers for honoraria for speaking or appearing before such entities.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:

(1) when a honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the Board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the Board Chair so that he or she, in consultation with the Executive Officer and staff counsel, may determine whether the potential for conflict of interest exists.

Board Member Orientation (Board Policy)

The California Business and Professions Code requires that a Board member orientation session be given to new Board members within one year of assuming office.

Ethics Training

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

Sexual Harassment Training (Government Code Section 12950.1)

Board members are required to undergo sexual harassment training and education once every two years. Staff will coordinate the training.

Addendums

Applicable provisions of the following:

Business and Professions Code
Executive Order 66-2
Government Code
State Administrative Manual

BSA 60-Day Status Report

**Exhibit
H**

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
www.chiro.ca.gov



February 23, 2007

Frederick Lerner, D.C.

Dear Dr. Lerner:

Congratulations on your appointment to the Board of Chiropractic Examiners (Board). Enclosed are the following items you will need for our upcoming Board meeting:

1. March 1, 2007 Board meeting packet
2. Robert's Rules of Order
3. Laws and Regulations Relating to the Practice of Chiropractic
4. Public Records Act; Open Meeting Act; Administrative Procedure Act
5. Disciplinary Guidelines and Model Disciplinary Orders

Please be sure to bring your Board meeting packet with you on the day of the Board meeting.

PLEASE NOTE: *The closed session minutes are confidential and cannot be released to the general public.*

If you have questions regarding the documents I have provided, you may contact me by email or telephone.

Sincerely,

COPY

Mariene Valencia
Administrative Unit
(916) 263-5363
mvalencia@chiro.ca.gov

Enclosures

BOARD OF CHIROPRACTIC EXAMINERS

2525 Natomas Park Drive, Suite 260
 Sacramento, California 95833-2931
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BOARD MEMBER APPOINTMENT CHECKLIST

Employee's Name: F. LEENER, D.C.

Effective Date: _____
 (Must be Date Oath is Signed)

Position Number: _____
 (Full position number required)

Documents/Forms:

Mailed Rec'd

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Oath of Office, Std. 688 [normally provided at the Governor's office]
 Employee Action Request, Std. 686
 Designation of Person Authorized to Receive Warrants, Std. 243
 Employment Eligibility Verification, Form I-9
 Authorization to Use Privately Owned Vehicles on State Business, Std. 261
 Emergency Notification
 Fair & Political Practices Commission, Form 700

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Pocket Travel Guide
 Travel Claim Worksheet [blank sheets]
 Salary Per Diem & Travel Reimbursement Memo [dated 10/2/2006]
 Attendance Report [blank sheets]

Publications:
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☒
☒
☒

Robert's Rules of Order
 Sunset Review (latest copy)
 Open Meetings Act
 Public Records Act
 Administrative Procedure Act
 Initiative Act & Regulations
 Disciplinary Guidelines

Training:
☐
☐
☐

Board Member Orientation
 Ethics
 Sexual Harassment

Other:
☒

Self-addressed stamped envelopes

Board of Chiropractic Examiners

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March 19, 2007

James Conran

Dear Mr. Conran:

Congratulations on your appointment to the Board of Chiropractic Examiners (Board). Enclosed you will find the following items that will help you during your term as Board member:

- Robert's Rules of Order
- Sunset Review (latest copy)
- Open Meetings Act; Public Records Act; Administrative Procedure Act
- Regulations Relating to the Practice of Chiropractic; Initiative Act and Law
- Disciplinary Guidelines
- Pocket Travel Guide
- Travel Claim Worksheet [blank sheets]
- Salary Per Diem & Travel Reimbursement Memo [dated 10/2/2006]
- Attendance Report [blank sheets]
- Board of Chiropractic Examiners Orientation manual

The items below are to be filled out and returned to me, as soon as possible:

- Employee Action Request, Std. 686
- Designation of Person Authorized to Receive Warrants, Std. 243
- Employment Eligibility Verification, Form I-9
- Authorization to Use Privately Owned Vehicles on State Business, Std. 261
- Emergency Notification
- Fair & Political Practices Commission, Form 700

I have also enclosed a few self-addressed stamped envelopes to be used when sending correspondence to me. If you have questions regarding the documents I have provided, you may contact me by email or telephone.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Valencia'.

Marlene Valencia
Administrative Unit
(916) 263-5363
mvalencia@chiro.ca.gov

Enclosures

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**BOARD MEMBER
APPOINTMENT CHECKLIST**

Employee's Name: J. Conran

Effective Date: _____
(Must be Date Oath is Signed)

Position Number: _____
(Full position number required)

Documents/Forms:

Mailed	Rec'd	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Oath of Office, Std. 688 [normally provided at the Governor's office]
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Employee Action Request, Std. 686
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Designation of Person Authorized to Receive Warrants, Std. 243
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Employment Eligibility Verification, Form I-9
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Authorization to Use Privately Owned Vehicles on State Business, Std. 261
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Emergency Notification
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Fair & Political Practices Commission, Form 700
<input checked="" type="checkbox"/>		Pocket Travel Guide
<input checked="" type="checkbox"/>		Travel Claim Worksheet [blank sheets]
<input checked="" type="checkbox"/>		Salary Per Diem & Travel Reimbursement Memo [dated 10/2/2006]
<input checked="" type="checkbox"/>		Attendance Report [blank sheets]

Publications:

☒ Robert's Rules of Order
☒ Sunset Review (latest copy)
☒ Open Meetings Act
☒ Public Records Act
☒ Administrative Procedure Act
☒ Initiative Act & Regulations
☒ Disciplinary Guidelines
☒ BLE Member Orientation

Training:

☐ Board Member Orientation
☐ Ethics
☐ Sexual Harassment

Other:

☒ Self-addressed stamped envelopes

Board of Chiropractic Examiners

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March 19, 2007

Hugh Lubkin, D.C.

Dear Dr. Lubkin:

Congratulations on your appointment to the Board of Chiropractic Examiners (Board). Enclosed you will find the following items that will help you during your term as Board member:

- Robert's Rules of Order
- Sunset Review (latest copy)
- Open Meetings Act; Public Records Act; Administrative Procedure Act
- Regulations Relating to the Practice of Chiropractic; Initiative Act and Law
- Disciplinary Guidelines
- Pocket Travel Guide
- Travel Claim Worksheet [blank sheets]
- Salary Per Diem & Travel Reimbursement Memo [dated 10/2/2006]
- Attendance Report [blank sheets]
- Board of Chiropractic Examiners Orientation manual

The items below are to be filled out and returned to me, as soon as possible:

- Employee Action Request, Std. 686
- Designation of Person Authorized to Receive Warrants, Std. 243
- Employment Eligibility Verification, Form I-9
- Authorization to Use Privately Owned Vehicles on State Business, Std. 261
- Emergency Notification
- Fair & Political Practices Commission, Form 700

I have also enclosed a few self-addressed stamped envelopes to be used when sending correspondence to me. If you have questions regarding the documents I have provided, you may contact me by email or telephone.

Sincerely,

A handwritten signature in dark ink, appearing to read 'MV Valencia'.

Marlene Valencia
Administrative Unit
(916) 263-5363
mvalencia@chiro.ca.gov

Enclosures

BOARD OF CHIROPRACTIC EXAMINERS

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**BOARD MEMBER
APPOINTMENT CHECKLIST**Employee's Name: H. Lubkin, D.C.Effective Date: _____
(Must be Date Oath is Signed)Position Number: _____
(Full position number required)**Documents/Forms:**

Mailed	Rec'd	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Oath of Office, Std. 688 [normally provided at the Governor's office]
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Employee Action Request, Std. 686
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Designation of Person Authorized to Receive Warrants, Std. 243
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Employment Eligibility Verification, Form I-9
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Authorization to Use Privately Owned Vehicles on State Business, Std. 261
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Emergency Notification
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fair & Political Practices Commission, Form 700
<input checked="" type="checkbox"/>		Pocket Travel Guide
<input checked="" type="checkbox"/>		Travel Claim Worksheet [blank sheets]
<input checked="" type="checkbox"/>		Salary Per Diem & Travel Reimbursement Memo [dated 10/2/2006]
<input checked="" type="checkbox"/>		Attendance Report [blank sheets]

Publications:

- ☒ Robert's Rules of Order
- ☒ Sunset Review (latest copy)
- ☒ Open Meetings Act
- ☒ Public Records Act
- ☒ Administrative Procedure Act
- ☒ Initiative Act & Regs
- ☒ Disciplinary Guidelines
- ☒ BCE Member Orientation

Training:

- ☐ Board Member Orientation
- ☐ Ethics
- ☐ Sexual Harassment

Other:

- ☒ Self-addressed stamped envelopes

Board of Chiropractic Examiners

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www.chiro.ca.gov

**Board Member Orientation Training**

Provided by Department of Consumer Affairs

Name of Attendee	Date	Location	
Hugh Lubkin, D.C.	9/19/2007	Oakland, CA	✓
Frederick Lerner, D.C.	9/19/2007	Oakland, CA	✓
Richard Tyler, D.C.	9/19/2007	Oakland, CA	✓
Francesco Columbu, D.C.	2/6/2008	DCA Headquarters - Sacramento, CA	✓
Jim Conran	2/6/2008	DCA Headquarters - Sacramento, CA	✓
James Duvaras	2/6/2008	DCA Headquarters - Sacramento, CA	✓

BSA 60-Day Status Report

Exhibit I

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Enforcement Committee of the Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008

(Upon Conclusion of the Licensing Committee Meeting)

2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA**Call To Order****Approval of Minutes**

- March 27, 2008

PUBLIC COMMENT**Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Discussion and Possible Action

- DRX 9000
- Laser Treatments

FUTURE AGENDA ITEMS**PUBLIC COMMENT****ADJOURNMENT****ENFORCEMENT COMMITTEE**

Hugh Lubkin, D.C., Chair
Judge James Duvaras, Retired

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Board of Chiropractic Examiners

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**NOTICE OF BOARD MEETING****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 24, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved License Applications

Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update



BSA 60-Day Status Report

Exhibit J

Board of Chiropractic Examiners

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**Application – Expert Witness/Consultant**

If you need additional space to complete the application, please attach a separate sheet or complete the information on the reverse side. Please complete each section and **attach your curriculum vita/resume.**

APPLICANT INFORMATION

Name:		License Number:	
Business Address:			
City:		State:	ZIP Code:
Phone:	Fax:	E-mail:	
Are you a citizen of the United States? YES <input type="checkbox"/> NO <input type="checkbox"/>			
If no, are you authorized to work in the U.S.? YES <input type="checkbox"/> NO <input type="checkbox"/>			
Have you ever been employed by or provided services to the Board? YES <input type="checkbox"/> NO <input type="checkbox"/>			
If so, when and what services?			

EMPLOYMENT INFORMATION

Current Employer:		How long?	
Address:			
City:		State:	ZIP Code:
Phone:	Fax:	E-mail:	
Position:			

COLLEGE EDUCATION

College/University:			
Address:		Phone:	
City:		State:	ZIP Code:
Degree:		Year:	

PROFESSIONAL EDUCATION

College:			
Address:		Phone:	
City:		State:	ZIP Code:

Degree:

Year:

PROFESSIONAL QUALIFICATIONS

Are you board-certified or board-eligible in any of the chiropractic diplomat programs? YES ☐ NO ☐

If yes, attach a copy of each certification or eligibility.

Have you, at any time in the past two years, worked for an insurance carrier, self-insured plan, third party administrator, or chiropractic claims review company? YES ☐ NO ☐

If yes, attach a description of the services you provided and your employment relationship with the above-mentioned entities.

Are you a State of California Qualified Medical Evaluator? YES ☐ NO ☐

If yes, attach a copy of the certificate.

Have you testified in court as an expert witness? YES ☐ NO ☐

If yes, how many times: _____

For each phrase listed below, please mark the statement that most accurately represents the depth of your knowledge and skill in the field of Chiropractic.

A) Knowledge and skill in case review of medical records (including x-rays) for the purpose of medical and legal proceedings.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

B) Knowledge and skill in presenting testimony in court or arbitrations as an expert in medical and legal proceedings.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

C) Knowledge and skill in rendering opinions regarding treatment utilization.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

D) Knowledge and skill in performing case management review.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

E) Knowledge and skill in reviewing chiropractic laws and regulations and written opinions relating to the review of these laws and regulations.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

F) Knowledge and skill in testifying and interpreting chiropractic laws and regulations.

☐ I possess this knowledge and skill ☐ I do NOT possess this knowledge and skill.

Academic Appointments:

Have you ever held any academic appointments at any college or university? YES ☐ NO ☐

If yes, attach a description of each appointment and your job duties.

Have you developed or assisted in the development of chiropractic statutes, regulations, and/or guidelines? YES ☐ NO ☐

If yes, please attach a description of each experience.

Publications:

Please list all published articles and texts which you have written:

REFERENCES

Please list two professional references.

Full Name:	Relationship:
Company:	Phone:
Address:	
City:	State: ZIP Code:
Full Name:	Relationship:
Company:	Phone:
Address:	
City:	State: ZIP Code:

ADDITIONAL INFORMATION

Have you ever been involved in a malpractice lawsuit or arbitration proceeding related to your treatment of a patient? YES ☐ NO ☐

If yes, attach an explanation of each lawsuit or arbitration complaint.

Are there currently any pending medical malpractice lawsuits or arbitration claims? YES ☐ NO ☐

If yes, attach an explanation of each lawsuit or arbitration complaint.

Has your professional liability insurance coverage ever been denied, limited, or cancelled by the action of any insurance company? YES ☐ NO ☐

If yes, attach explanation for each occurrence.

Have any of the following been, or are any currently in the process of being, investigated, denied, revoked, suspended, refused, limited, placed on probation or placed under other disciplinary action? You must answer all questions and provide an explanation for each affirmative answer.

(a) Chiropractic license in this state or another state or territory YES ☐ NO ☐

(b) Any professional license, registration, or certification YES ☐ NO ☐

(c) Academic appointment YES ☐ NO ☐

(d) Membership or employment on any hospital medical staff YES ☐ NO ☐

(e) Clinical privileges or other rights on any medical staff YES ☐ NO ☐

(f) Other institutional affiliation or status YES ☐ NO ☐

(g) Professional society membership or fellowship YES ☐ NO ☐

(h) Participation in any private, state, or federal health insurance program YES ☐ NO ☐

(i) Any other type of professional sanction, discipline, or other adverse action YES ☐ NO ☐

(j) Have you ever been the subject of any investigation by any private, state, or federal health insurance program? YES ☐ NO ☐

(k) Have you ever been convicted of a misdemeanor or felony or are you currently under indictment for any alleged criminal activities? YES ☐ NO ☐

(l) Have you ever been the object of an administrative, civil, or criminal complaint or investigation regarding sexual misconduct? YES ☐ NO ☐

(m) Have you ever voluntarily surrendered a professional license, staff privileges or consented to a limitation of the same pending a review or investigation? YES ☐ NO ☐

(n) Are there any other issues that should be disclosed that may have an adverse impact on your ability to deliver effective and objective professional services? YES ☐ NO ☐

Please Read and Initial each Paragraph and Sign

I hereby certify that I have not knowingly withheld any information that might adversely affect my Appointment as an expert reviewer and that the answers given by me are true and correct to the best of my knowledge. I further certify that I, the undersigned applicant, have personally completed this application.

I hereby authorize the Board to thoroughly investigate all of the information I have provided on this application, including attachments, as well as my references, work record, education and other matters related to my suitability for employment and, further, authorize the references I have listed to disclose to the company any and all letters, reports and other information related to my work records, without giving me prior notice of such disclosure. In addition, I hereby release the Board, my current and former employers and all other persons, corporations, partnerships and associations from any and all claims, demands or liabilities arising out of or in any way related to such investigation or disclosure. _____

I hereby certify under penalty of perjury under the laws of the State of California that all statements, answers and representations in this application, including all attachments, are true and accurate.

Signature of applicant: _____ Date: _____

BSA 60-Day Status Report

Exhibit L

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Continuing Education Committee** of the **Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008

9:30 a.m.

**2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA**CALL TO ORDER****APPROVAL OF MINUTES**

- November 1, 2007

PUBLIC COMMENT**Discussion and Possible Action**

- Proposed Approval Process for Continuing Education Providers

Discussion and Possible Action

- Approval by Ratification of Formally Approved Continuing Education Providers

Discussion and Possible Action

- Proposal to Increase Required Continuing Education Hours from 12 to 24 Hour Annually

Discussion and Possible Action

- Proposal to Approve On-Line Continuing Education Courses

Discussion and Possible Action

- Petition to Appeal the Denial of Continuing Education Course
 - Texas Chiropractic College

FUTURE AGENDA ITEMS**PUBLIC COMMENT****ADJOURNMENT****Continuing Education Committee**

**Richard Tyler, D.C., Chair
Hugh Lubkin, D.C.**

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**NOTICE OF BOARD MEETING****May 22, 2008**

Upon Conclusion of the Strategic Planning Committee Meeting

Hearing Room**1625 North Market Blvd., Room S102****Sacramento, CA 95834****AGENDA****PUBLIC SESSION****Call to Order**

Frederick Lerner, D.C., D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

Chair's Report**Approval of Minutes**

March 24, 2008, Open Session

Public Comment**Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****Executive Officer's Report**

- Budget
- Personnel
- Licensing
- Enforcement

COMMITTEE REPORTS**Enforcement Committee – Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Licensing Committee - Discussion and Possible Action

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Continuing Education Committee - Discussion and Possible Action

- Approval by Ratification of Formerly Approved Continuing Education Providers

Scope of Practice Committee - Discussion and Possible Action

- Recognition of Chiropractic Specialties re Advertising
- Chiropractic Scope of Practice for X-ray Use Update



MEMORANDUM**Date:** May 15, 2008**To:** Board Members**From:** Brian J. Stiger,
Executive Officer**Subject:** Ratification of Formerly Approved Continuing Education Providers

This is to request that the Board ratify the following approved continuing education providers at the May 22, 2008, public meeting.

Staff reviewed and confirmed that the applicants met the requirements and then approved of the following continuing education providers between May 4, 2006, and May 8, 2008:

Continuing Education Providers	Date of Staff Approval
George R. LeBeau, D.C.	05/04/06
William J. Moreau, D.C.	05/08/06
Nancy M. Molina, D.C.	12/14/06
Chi's Enterprise, Inc.	04/10/07
Recovery Systems Clinic	06/14/07
Lorman Business Center, Inc.	08/09/07
Victor Y. Tong, D.C.	08/09/07
Marcello Caso Chiropractic, Inc.	10/22/07
M. Daniel Bivins, D.C.	11/02/07
H. J. Ross Company	11/20/07
Sole Supports	05/08/08

If you have any questions or concerns, please contact me at your earliest opportunity.

Board of Chiropractic Examiners
Proposed Regulations Update
May 22, 2008

Proposed Regulation	Purpose	Status
Issuance of Citations and Fines	<p>To authorize the Board to assess fines up to \$5,000 for less serious violations of any laws or regulations governing the practice of chiropractic.</p> <p>This provides the Board the option of using citation and fine as a tool to gain compliance with applicable laws and regulations.</p>	<p>April 15, 2008: Notice of Proposed Regulation filed with the Office of Administrative Law (OAL)</p> <p>April 25, 2008 - June 9, 2008: 45-day written comment period</p> <p>June 9, 2008: Public Hearing in Sacramento</p>
Letter of Admonishment	<p>To authorize the Board the ability to issue a letter of admonishment to licensees for failure to comply with any laws or regulations governing the practice of chiropractic.</p> <p>This provides the Board with an informal method to address minor violations that do not rise to the level of citations or an accusation.</p>	<p>June 3, 2008: Projected filing date with OAL</p> <p>June 13, 2008 - July 28, 2008: Projected 45-day written comment period</p> <p>July 28, 2008: Projected public hearing in Sacramento</p>
Manipulation Under Anesthesia (MUA)	To establish a safe standard of care when a chiropractor is performing MUA.	<p>July 15, 2008: Projected filing date with OAL</p> <p>July 25, 2008 - September 8, 2008: Projected 45-day written comment period</p> <p>September 8, 2008: Projected public hearing in Sacramento</p>

**Board of Chiropractic Examiners
Proposed Regulations
Title 16, Division 4, California Code of Regulations**

§ 389. Letter of Admonishment.

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated and may contain an order of abatement.
- (c) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following: be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.
- (d) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
 - (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
 - (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference. Upon request and approval by the Executive Officer or his or her designee, the licensee may participate in the office conference by telephone.
 - (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
 - (C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
 - (D) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall

personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment. Within thirty days of service or mailing of the written decision, the licensee shall comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.

(E) Judicial review of the decision may be obtained by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified United States mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order. submit a written corrective action plan to the Executive Officer documenting compliance.

(3) The letter of admonishment shall be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 390 California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Section 10 of the Act.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****May 22, 2008****1625 North Market Blvd., Room S102
Sacramento, CA 95814****Board Members Present**

Frederick Lerner, DC., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
James Maynard, Staff Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 10:36 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Chair's Report

Dr. Lerner recognized the committees for the work that they have completed, and he applauded the staff for their efforts.

Approval of Minutes

**MR. CONRAN MOVED TO APPROVE THE MARCH 27, 2008 MINUTES AS AMENDED.
DR. LUBKIN SECONDED THE MOTION.
VOTE: 6-0
MOTION CARRIED**

DISCUSSION:

Dr. Tyler asked that the minutes reflect his objection to Kathleen Creason's comments on the MUA discussion.

Mr. Conran stated that anyone coming to a public meeting should be able to state their opinions without being chastised by the board. Mr. Conran said it is incumbent upon the Board to welcome any public comments whether the Board agrees with the comments or not.

Dr. Lubkin said since he has been on the Board, the Board has always encouraged and welcomed public comments.

Dr. Columbu suggested that the minutes reflect more details of the discussion to ensure nothing is missed. Dr. Columbu offered an example of the comments made at the March 1, 2007, Board meeting. Mr. Conran offered to take this item up in the Government Relations Committee.

PUBLIC COMMENT:

Mr. Conran announced that Mr. David Prescott died and that he was deeply saddened by his passing. Mr. Conran recommended that the Board send a letter to Mr. Prescott's family expressing the Board's appreciation for his tireless work on behalf of the profession.

Dr. Lerner agreed about the letter and expressed his sadness over Mr. Prescott's passing.

Dr. Lubkin asked that all Board Members have an opportunity to sign the letter.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.

Ms. Powell just returned from family medical leave and did not have a topic for this meeting. Ms. Powell stated she has discussed and trained the Board on every aspect of the Bagley-Keene Act over the past year and at this point will only bring up issues as needed.

Mr. Conran recommended that this subject remain on future agendas items for new Board Members.

Dr. Lubkin asked how Board Members recuse themselves from an agenda item. Ms. Powell said the Board Member would need to say he or she was going to recuse themselves and disclose the reasons why. During close session the minutes must reflect that the Board Member left the room and the time the Board Member returned. During open sessions, the Board Member can remain in the hearing but cannot participate in the discussion.

Executive Officer's Report

Mr. Stiger discussed the status of the current year budget and the results of the budget hearings for

next fiscal year. Both the Assembly and Senate budget committees approved our 08/09 budget, which included an additional 15% for six investigator positions.

Mr. Stiger discussed a new organizational chart effective July 1, 2008, and an update of the filling vacant positions.

Judge Duvaras asked if staffing levels have increased under the current Executive Officer. Mr. Stiger explained that with the six additional field investigator positions the staffing level has indeed increased. Judge Duvaras asked if Mr. Stiger had an assistant. Mr. Stiger stated that he does not have an assistant but will consider creating a position as the program grows.

Dr. Lubkin asked if our staffing levels justified additional managers. Mr. Stiger explained that he submitted personnel packages to add two managers. These packages were reviewed and approved by the DCA personnel office.

Mr. Stiger introduced Ray Delaney and Valerie James as the newest staff members. Dr. Lerner welcomed both on behalf of the Board.

Mr. Stiger provided an update on the recruitment and appointment of all vacant positions.

Dr. Lubkin asked about the status of hiring the special investigators. Mr. Stiger explained that it would take about 45 days to bring on the Supervising Special Investigator and then begin hiring the investigators. Mr. Stiger estimated that the investigators would be brought on in August.

Dr. Lubkin asked when would the Board be caught up on enforcement matters. Mr. Stiger anticipates being current by the end of the year.

Marlene Valencia presented the licensing report. Ms. Valencia thanked the chiropractic colleges and specifically the registrar's office for their assistance and support over the past several months. Ms. Valencia announced that with the addition of new staff the licensing unit is current with all applications.

Ms. Valencia discussed the licensing statistics. Mr. Conran asked if the testing statistics have been consistent over the past several years. Mr. Conran raised a concern with the high failure rate and wondered if the Board could assist without lowering its standards. Ms. Valencia said she would research the test scores.

Dr. Lerner questioned keeping running totals of licensing statistics. Dr. Lerner recommended keeping the licensing statistics year by year rather than a running total. Mr. Stiger agreed with the recommendation and said the Board would receive a revised report at the next Board meeting.

Judge Duvaras asked the definitions of a satellite office, chiropractic corporation, and referral service. Ms. Valencia, Mr. Stiger, and Ms. Powell explained these licensing categories to Judge Duvaras.

Judge Duvaras asked if the chiropractic referral service was similar to that of the State Bar's referral service. Ms. Powell explained that the Board regulates chiropractic referral services but does not require chiropractic referral services to refer a specific number of chiropractors to consumers.

Ms. Powell explained how consumers could conduct their own research through accessing the Board's website.

Dr. Lubkin asked Mr. Stiger if the licensing report could include disciplinary actions. Dr. Lerner reiterated that enforcement reporting will be important as the Board moves forward.

Dr. Lubkin expressed a concern that California has lost thousands of licensees over the past decade and would like statistical information on why this is occurring. Mr. Stiger stated that this study would be more appropriate conducted by an association.

Mr. Conran agreed with Dr. Lubkin that the Board should be kept abreast of the demographic changes occurring in California. Ms. Powell stated that Board staff would not be able to collect this information and suggested that the Board contract with an outside consultant to conduct this study. Mr. Conran recommended that Government Relations Committee take this issue up.

Mr. Stiger presented the Enforcement Report. Dr. Tyler expressed a concern about the Board acting on anonymous complaints. Mr. Stiger stated that the Board is updating its complaint intake procedures. Mr. Stiger said the Board does receive a number of legitimate anonymous complaints particularly dealing with unlicensed activity. Dr. Tyler is concerned that the Board may be spending resources investigating anonymous complaints because the complainant does not like a certain chiropractor. Mr. Stiger said the Board does not investigate every single complaint it receives.

Dr. Lubkin requested that the Chair assign the Continuing Education Committee to work with the associations to educate licensees in those core areas that constitute the majority of the complaints the Board receives.

Dr. Lerner agreed and added that the Continuing Education Committee should review bone fide ethics classes that require testing to demonstrate comprehension. Dr. Lerner would like a requirement put in place that requires licensees to take a class on the Board's laws and regulations.

COMMITTEE REPORTS

Enforcement Committee:

Dr. Lubkin reported that the Enforcement Committee voted to recommend to the full Board that CCR 306.1 be repealed.

MOTION: DR. LUBKIN MOVED THAT THE BOARD REPEAL CCR 306.1.

SECONDED: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTIONED CARRIES

Public Comment:

Dr. Charles Davis cautioned with the repeal of 306.1 there is nothing in the regulation structure that would prevent what happened in the past. Dr. Davis raised a concern that once the current staff left enforcement could revert to the old system.

Licensing Committee:

Mr. Stiger presented the report. Mr. Stiger discussed the need for the full Board to ratify license applications previously approved by Board staff.

MOTION: JUDGE DUVARAS MOVED THAT THE BOARD RATIFY LICENSES PREVIOUSLY APPROVED BY THE BOARD STAFF SINCE JULY 1, 2007.

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIES

Continuing Education Committee:

Dr. Tyler discussed the list of Continuing Education Providers previously approved by the Board staff. Dr. Tyler expressed a concern that Board staff cannot approve courses without Board Member assistance. Mr. Stiger said he would agendaize this topic at the next Continuing Education Committee meeting.

Mr. Conran asked if the list of providers were new or had they been providing courses in the past. Mr. Stiger stated these providers have been approved since May 2006.

Judge Duvaras asked for the number of providers that are currently approved. Mr. Stiger said he could provide that information in future reports.

Dr. Tyler discussed the proposed 24 hour increase in continuing education requirement and the possibility of distance learning. Dr. Tyler thanked Mr. Carlye Brankensiek for his presentation on distance learning at the last Continuing Education Committee Meeting.

Dr. Lerner asked for clarification on the Continuing Education Work Group and expressed his appreciation for the work group's anticipated proposals.

Mr. Conran said the idea of cross discipline classes was intriguing. He expressed concern about the Board allowing Continuing Education credit for classes on how to run a business.

Dr. Lerner provided an example of cross discipline training in which the North American Spine Society provides an annual course attended by 600 health professionals in multiple disciplines.

Dr. Tyler stressed that the classes must emphasize the practice of chiropractic.

Dr. Lubkin added that during the committee meeting the members asked the providers to submit security information regarding distance learning. Dr. Lubkin discussed instituting a fast track approval for chiropractic colleges, associations, and PACE approved programs. Smaller more individual providers would continue to use the current approval process. Dr. Lubkin discussed a goal of auditing 10% of all courses and courses regarding mandatory reporting.

Dr. Lerner reminded the committee to research potential reciprocity with FCLB for continuing education courses especially for nationally based providers.

Scope of Practice Committee:

Dr. Lubkin reported that the committee discussed chiropractic specialties and issues related to advertising and that Board staff would be researching this topic.

Dr. Lerner added that the committee voted to recommend to the full board that the board begin the regulation process to recognize chiropractic specialties and write a letter informing the Department of Industrial Relations, Division of Workers Compensation of this action.

Ms. Powell added that the board is limited to recognizing specialties through advertising restrictions,

which is the method used by the Medical Board and Dental Board. Ms. Powell states this needs to be made very clear to avoid the perception that the Board is attempting to create an additional license category.

Dr. Lerner asked for an example of an advertising restriction. Ms. Powell gave an example that you can only advertise as an orthopedist specialist in chiropractic care if you have a certification from a bona fide private organization.

MOTION: DR. LERNER MOVED THAT THE BOARD BEGIN THE REGULATORY PROCESS OF RECOGNIZING CHIROPRACTIC SPECIALTIES AND SEND A LETTER TO THE DEPARTMENT OF INDUSTRIAL RELATIONS INFORMING THEM THAT WE ARE BEGINNING THIS PROCESS. SECONDED: DR. TYLER SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

A discussion ensued regarding Department of Industrial Relations' proposed regulation.

Mr. Conran spoke in support of the motion and suggested that the Board raise this issue to the highest level and speak to John Duncan.

Dr. Charles Davis stated that establishing chiropractic specialties would not increase the chiropractic scope of practice.

Mr. Caryle Brakensiek, CSIMS, spoke in support of the motion and urged that the Board move with all deliberate speed to get this approved.

Kristine Schultz, CCA, spoke in support of the regulation as described by Ms. Powell.

Dr. Charles Davis, stated the Board recognized chiropractic orthopedics in 1996.

Dr. Lubkin asked for an update on chiropractic scope of practice for x-ray use. Ms. Powell introduced James Maynard who is a new attorney for the Department of Consumer Affairs. Mr. Maynard will provide a legal paper to the committee regarding this issue, which will be presented to the committee.

Dr. Lubkin commented that chiropractors were taught in Chiropractic College to x-ray the skull, torso, extremities, and the spine and he is looking forward to Mr. Maynard's legal opinion.

Dr. Lerner commented that the Initiative Act does not specify what kind of x-rays chiropractors can take. He continued that the regulations allow for diagnostic x-rays but does not specify chiropractic x-rays. Dr. Lerner said he does not understand the need for a legal opinion.

Ms. Powell stated she does not read the law that way. Ms. Powell added that no background work has been completed and the legal opinion provides the Board with the background to make an informed decision.

Dr. Lerner and Dr. Lubkin requested to meet with Mr. Maynard to discuss prior to him writing the legal opinion.

Dr. Schell commented that the Board has taken a long time to make a decision and asked if he could contact Mr. Maynard. Ms. Powell recommended that Dr. Schell could submit additional

information to Mr. Stiger.

Dr. Cheryl Dietrick provided background information on how she became aware of the chiropractic x-ray issue. Dr. Dietrick hopes that this would open a door to work with other medical health care providers.

Government Relations Committee:

Mr. Conran presented the major topics addressed at the last committee meeting including: hiring staff, sunset review, and Bureau of State Audit's 60 day response, and state issued e-mail accounts.

Mr. Conran reported that the committee thought favorably of the 60 day BSA audit response.

MOTION: MR. CONRAN MOVED THAT THE DRAFT 60 DAY AUDIT RESPONSE BE FORWARDED AS THE BOARD'S OFFICIAL RESPONSE WITH A COPY TO THE GOVERNOR'S OFFICE, STATE AND CONSUMER SERVICES AGENCY, AND THE DEPARTMENT OF CONSUMER AFFAIRS.

SECONDED: JUDGE DUVARAS SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED.

Dr. Tyler raised concerns about hiring a chiropractic consultant in the same capacity it was formally used. Mr. Stiger stated that this is an issue that needs to be addressed.

Dr. Lerner recommended that this issue be taken up by the Government Relations committee.

Mr. Conran stated that the committee is sensitive to Dr. Tyler's concerns and the committee will provide continual updates to the Board.

Mr. Conran presented the BSA recommendation to issue e-mail accounts to Board Members and discussed the benefits.

Judge Duvaras presented an analysis prepared by Roger Calton regarding the major problems experienced by this Board and former Boards. Mr. Calton recognized the positive improvements made by the Board and the Board's staff. Judge Duvaras congratulated and commended Mr. Calton for his analysis.

MOTION: DR. LUBKIN MOVED THAT THE BOARD IMPLEMENT BOARD MEMBER STATE ISSUED E-MAIL ACCOUNTS EFFECTIVE JUNE 1, 2008.

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED.

Public Relations Committee:

Dr. Lerner provided an update on the major topics discussed at the committee meeting. Dr. Lerner reported that the committee heard from the Russ Heimrich from the Department of Consumer Affairs. Dr. Lerner said that the committee has requested cost estimates from a few different organizations.

Dr. Lerner discussed the need for a newsletter and informational brochure on how to choose a

chiropractor. Dr. Lerner hopes to receive a lot of input from the profession and the public in these areas.

Legislative Committee:

Dr. Lerner reported that the committee recommends that the Board take a "Support if Amended" position on SB 1402 and send a letter to the author.

MOTION: DR. COLUMBU MOVED THAT THE BOARD TAKE A SUPPORT IF AMENDED POSITION ON SB 1402 AND SEND A LETTER TO THE AUTHOR.

SECONDED: DR. TYLER SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED.

Dr. Lerner reported that the committee voted to take a "Support" position on AB 2969 (Lieber).

MOTION: DR. LUBKIN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON AB 2969.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

Dr. Lerner reported that the committee voted to take a "Support" position on SB 1441 (Ridley-Thomas).

MOTION: MR. CONRAN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON SB 1441.

SECONDED: DR. COLUMBU SECONDED THE MOTION

VOTE: 4-0-2

MOTION CARRIED

Judge Duvaras spoke in opposition of the bill because it duplicates what the Board is currently doing.

Dr. Lubkin asked if the author planned to use public interest groups and use them as monitors.

Ms. Powell explained the bill and that it is designed to establish best practices for diversion programs.

Mr. Conran spoke in support of the bill and if it passes we would be able to comment on the diversion program.

Dr. Columbu asked if this bill establishes an enforcement monitor. Ms. Powell said the bill does not establish an enforcement monitor and that if the bill is amended to include an enforcement monitor he would notify the Legislative Committee.

Strategic Planning Committee:

Dr. Tyler reported that the committee reviewed and discussed proposed strategic goals and objectives. He explained this is a work in progress and would keep the Board updated.

Regulations Update:

Mr. Stiger provided an update to the three pending regulation packages.

Mr. Stiger explained that the Board previously approved of proposed regulatory language for the Letter of Admonishment. However, after further review, Board staff revised the language to ensure the Board had the authority to implement.

Ms. Powell added that the initial language would have raised a concern with the Office of Administrative Law.

Judge Duvaras spoke in support of the motion.

MOTION: DR. LUBKIN MOVED THAT THE BOARD ADOPT THE REVISED LANGUAGE FOR THE LETTER OF ADMONISHMENT AS AN ADDITIONAL ENFORCEMENT TOOL.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 5-0

MOTION CARRIED.

Board Meeting Schedule for 2008

Mr. Stiger reported that Board Member concerns have been raised about conducting two-day Board Meetings and that the schedule should be reviewed. Mr. Stiger also mentioned that SCUHS invited the Board to hold its next meeting at the campus in Whittier.

Dr. Lerner commented that the Board needs to conduct a couple of two-day meetings to alleviate the backlog of petitioner hearings.

Dr. Tyler suggested that we have monthly one day meetings rather than two-day meetings to save expenses.

Dr. Lubkin offered that he has cut his practice by half to complete Board business and suggested more frequent meetings.

Dr. Columbu proposed more one day meetings.

Mr. Conran built his schedule around previously adopted Board meetings and his schedule does not provide a lot of elasticity.

Dr. Lerner stated that having monthly one day meetings is the same as having two day meetings every two months.

Mr. Stiger clarified that the schedule is to have only two meetings that cover two days.

Ms. Powell said that Boards typically meeting no more than five times in a year and she would not

be able to meet monthly due to her schedule.

Ms. Powell also suggested that meeting at a chiropractic school may give the wrong impression.

Ms. Powell recommended that the Board agendaize a discussion on delegating petitioner hearings to the Attorney General's Office.

Mr. Conran stated that the Board move meetings throughout the state to give the opportunity for the public to attend and Mr. Conran supports meeting at chiropractic schools.

Judge Duvaras opposes keeping the schedule the same and recommends that petitioner hearings be held in Sacramento.

Dr. Lubkin stated that the decision made to conduct two-day meetings was made during the board's reduced budget and he is opposed to two-day meetings.

MOTION: DR. TYLER MOVED THAT THE SCHEDULE REMAIN THE SAME FOR THE REMAINDER OF THE YEAR.

SECONDED: MR. CONRAN SECONDED THE MOTION.

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

MOTION: JUDGE DUVARAS MOVED TO RESTRUCTURE THE BOARD MEETINGS TO ELIMINATE TWO-DAY MEETINGS.

SECONDED: DR. COLUMBU SECONDED THE MOTION

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

Dr. Lerner reported that the Board was invited to SCHUS for a future Board meeting.

MOTION: DR. LUBKIN MOVED THAT THE BOARD HOLD A FUTURE MEETING AT SCHUS.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

PUBLIC COMMENT

Dr. Charles Davis suggested that the Board hold more public meetings in Southern California.

Dr. Lerner proposed to move the San Diego meeting to Burbank.

Future Agenda Items

Mr. Conran would like to invite deans from Chiropractic Colleges to update the full Board on their curriculums and other matters.

Dr. Keith Henry, Cleveland Chiropractic College, announced that he will be attending Board meetings on a regular basis.

ADJOURN TO CLOSED SESSION

Dr. Lerner adjourned the meeting to closed session.

OPEN SESSION

Dr. Lerner opened the session and announced that the Board discussed two disciplinary matters.

ADJOURNMENT OF PUBLIC SESSION

Dr. Lerner adjourned the public session at 2:42.

Board of Chiropractic Examiners

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**NOTICE OF BOARD MEETING**

July 30 – 31, 2008
Southern California University of Health Sciences
16200 E. Amber Valley Dr.
Building M, Room 41
Whittier, CA 90604

Wednesday, July 30, 2008
11:00 a.m. to 5:00 p.m.

AGENDA**1. PUBLIC SESSION Call to Order**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

2. Chair's Report**3. Approval of Minutes**

- A. May 22, 2008, Public Session
- B. August 16, 2007, Public Session

4. Public Comment**5. Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****6. Executive Officer's Report**

- A. Budget
- B. Personnel
- C. Licensing
- D. Enforcement

7. Committee Reports

- A. Public Relations Committee – Discussion and Possible Action
 - Contract for Public Relations
- B. Licensing Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved License Applications
 - License Reciprocity with Other States
 - Recognizing Chiropractic Assistants
 - Increase of License and Renewal Fees
- C. Continuing Education Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved Continuing Education Providers
 - Update on the Continuing Education Work Group's Proposed Regulations

- D. Scope of Practice Committee - Discussion and Possible Action
 - Recognition of Chiropractic Specialties re Advertising
 - Chiropractic Scope of Practice for X-ray Use Update
 - Issues Raised in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt Scope of Practice Regulations as Needed, " Submitted by David Prescott, Attorney
- E. Government Relations Committee - Discussion and Possible Action
 - Board Member Use of State Issued E-Mail Accounts
 - Format of Meeting Minutes for Public Meetings
 - Review of Chiropractic Consultant Classification
- F. Legislative Committee – Discussion and Possible Action
 - Senate Bill 963 (Ridley-Thomas)
 - Senate Bill B 1402 (Corbett)
 - Any other legislative bills of interest to the Board

8. Lunch

9. Public Comment

10. Future Agenda Items

11. Hearings re: Petition for Early Termination of Probation

- Anthony Loc Boa Nguyen
- Thomas Nutting
- Kwang E. Kim

12. CLOSED SESSION:

- A. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)
- B. Evaluation of the Executive Officer Pursuant to California Government Code Section 11126(a)

13. PUBLIC SESSION: Announcements re Closed Session

Thursday, July 31, 2008

8:00 a.m. 5:00 p.m.

14. CLOSED SESSION

- A. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions Pursuant to California Government Code Section 11126 (c)(3)
 - Aster Kifle-Thompson

15. PUBLIC SESSION: Call to Order

- Announcements Re Closed Session

16. Hearings re: Petition for Early Termination of Probation

- Adam Kleinberg
- Asghar Ebadat

- James Slusher

17. Hearings re: Petition for Reinstatement of Revoked License

- James Dresser
- Paul Kobulnicky
- Olatungie Fergusson
- Joseph Scannell

18. CLOSED SESSION:

**19. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions
Pursuant to California Government Code Section 11126(c)(3)**

20. PUBLIC SESSION Announcements re Closed Session

21. Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

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The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

2. Chair's Report**3. Approval of Minutes**

- A. May 22, 2008, Public Session
- B. August 16, 2007, Public Session

4. Public Comment**5. Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****6. Executive Officer's Report**

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- B. Personnel
- C. Licensing
- D. Enforcement

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D. Scope of Practice Committee - Discussion and Possible Action

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- Issues Raised in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt Scope of Practice Regulations as Needed," Submitted by David Prescott, Attorney

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- Review of Chiropractic Consultant Classification

F. Legislative Committee - Discussion and Possible Action

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- Any other legislative bills of interest to the Board

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21. Adjournment

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****May 22, 2008****1625 North Market Blvd., Room S102
Sacramento, CA 95814****Board Members Present**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 10:36 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Chair's Report

Dr. Lerner recognized the committees for the work that they have completed, and he applauded the staff for their efforts.

Approval of Minutes

MR. CONRAN MOVED TO APPROVE THE MARCH 27, 2008 MINUTES AS AMENDED.

DR. LUBKIN SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

DISCUSSION:

Dr. Tyler asked that the minutes reflect his objection to Kathleen Creason's comments on the MUA discussion.

Mr. Conran stated that anyone coming to a public meeting should be able to state their opinions without being chastised by the board. Mr. Conran said it is incumbent upon the Board to welcome any public comments whether the Board agrees with the comments or not.

Dr. Lubkin said since he has been on the Board, the Board has always encouraged and welcomed public comments.

Dr. Columbu suggested that the minutes reflect more details of the discussion to ensure nothing is missed. Dr. Columbu offered an example of the comments made at the March 1, 2007, Board meeting. Mr. Conran offered to take this item up in the Government Relations Committee.

PUBLIC COMMENT:

Mr. Conran announced that Mr. David Prescott died and that he was deeply saddened by his passing and recommended that the Board send a letter to Mr. Prescott's family expressing the Board's appreciation for his tireless work on behalf of the profession.

Dr. Lerner agreed about the letter and expressed his sadness over Mr. Prescott's passing.

Dr. Lubkin asked that all Board Members have an opportunity to sign the letter.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.

Ms. Powell just returned from family medical leave and did not have a topic for this meeting. Ms. Powell stated she has discussed and trained the Board on every aspect of the Bagley-Keene Act over the past year and at this point will only bring up issues as needed.

Mr. Conran recommended that this subject remain on future agendas items for new Board Members.

Dr. Lubkin asked how a Board Member recuses themselves from an item? Ms. Powell said the Board Member would need to say he or she was going to recuse themselves and disclose the reasons why. During close session the minutes must reflect that the Board Member left the room and when the Board Member returned. During open sessions, the Board Member can remain in the hearing but cannot participate in the discussion.

Executive Officer's Report

Mr. Stiger discussed the status of the current year budget and the results of the budget hearings for next fiscal year. Both the Assembly and Senate budget committees approved our 08/09 budget, which included an additional 15% for six investigator positions.

Mr. Stiger discussed a new organizational chart effective July 1, 2008 and an update of the filling vacant positions.

Judge Duvaras asked if staffing levels have increased under the current Executive Officer. Mr. Stiger explained that with the six additional field investigator positions the staffing level has indeed increased. Judge Duvaras asked if Mr. Stiger had an assistant. Mr. Stiger stated that he does not have an assistant but will consider creating a position as the program grows.

Dr. Lubkin asked if our staffing levels justified additional managers. Mr. Stiger explained that he submitted packages to add two managers. These packages were reviewed and approved by the DCA personnel office.

Mr. Stiger introduced Ray Delaney and Valerie James as the newest staff members. Dr. Lerner welcomed both to the Board.

Dr. Lubkin asked about the status of hiring the special investigators. Mr. Stiger explained that it would take about 45 days to bring on the Field Operations Manager

and the need to continue saving funds until the budget is restored. Mr. Conran asked if Mr. Stiger had a plan on hiring staff. Mr. Stiger stated he will begin recruiting for enforcement positions first and then move to licensing and administrative support.

Ms. Valencia presented licensing statistics to the Board and explained the licensing report.

Ms. Matthews presented enforcement statistics and explained both charts to the Board. Judge Duvaras asked how successful is the Board in recovering cost recovery. Mr. Stiger stated the Board is moderately successful and looking for ways to improve. Dr. Lubkin asked about the increase in section 312 violations. Mr. Stiger stated this speaks to licensees who are delinquent in renewing their licenses on time.

NBCE Delegate Selection – Information only

Dr. Lerner selected Dr. Lubkin as the delegate and Dr. Lerner as the alternate.

Citation and Fine language

Mr. Stiger stated that on January 10, 2008, the Enforcement Committee voted to recommend that the full Board approve the proposed regulatory language for cite and fine.

Mr. Conran expressed concerns that citations not be used unfairly to punish licensees and suggests

that the Enforcement Committee review the program in six months to determine its value. Dr. Lubkin as the Enforcement Committee Chair agreed to this review

Mr. Bill Howe, CCA, spoke in support.

MR. CONRAN MOVED TO ADOPT THE CITE AND FINE LANGUAGE. DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: Mr. Conran asked how the fines will be determined. Ms. Powell answered that the fine limits are held in statute.

Mr. Conran asked if the Enforcement Committee will be reviewing the program to include guidance to the Executive Officer to determine the fine amounts. Dr. Lubkin stated the purpose of the regulation is to provide the Executive Officer with enforcement tool to use at his discretion to enforce the law.

Dr. Charles Davis, ICAC, spoke in support of the regulation and revisiting the program in six months to assess the effectiveness.

Bill Howe, CCA, spoke in support of the proposal.

VOTE: 6-0. MOTION CARRIED.

DR. LUBKIN MOVED TO DIRECT STAFF TO RESEARCH BUSINESS AND PROFESSIONS CODE 125.9 AND UNLESS THE STATUTE PROHIBITS THE BOARD FROM RENEWING A LICENSE IF THE FINE IS STILL OWING – IF THAT IS NOT IN 125.9, THAT LANGUAGE WILL BE PLACED IN THESE PROPOSED REGULATIONS BEFORE BEING NOTICED TO THE PUBLIC. MR. CONRAN SECONDED.

DISCUSSION: None

VOTE 6-0.

MOTION CARRIED.

Letter of Admonishment

MR. CONRAN MOVED TO APPROVE THE LANGUAGE.

DR. TYLER SECONDED THE MOTION.

DISCUSSION: Dr. Davis asked how citations and the letter of admonishment would be disclosed. Ms. Powell stated citations and the letter of admonishment are not considered discipline of the license but would be disclosed to the public on a public records request.

VOTE 6-0. MOTION CARRIED.

Bureau of State Audits Report

Dr. Lerner thanked the BSA on the completion of the audit and stated the Board began working and correcting the deficiencies before the audit was released. Dr. Lerner stated this is a new day for the BCE and we will use the audit's findings as a road map to correct the past problems.

COMMITTEE REPORTS

Legislative Committee:

Dr. Lubkin announced that the committee voted to recommend a support position on AB 450 and AB 1861. The committee voted to recommend a watch position on AB 1402 pending the outcome of anticipated amendments.

JUDGE DUVARAS MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATIONS. DR. TYLER SECONDED THE MOTION.

DISCUSSION: None.

VOTE 6-0. MOTION CARRIED.

Enforcement Committee:

Dr. Lubkin announced that the committee reviewed the revised Expert Witness guidelines developed by the working group.

Dr. Lubkin stated that the committee referred the issue of chiropractic use of radiology to staff and legal counsel for review and research.

Dr. Lubkin announced that the committee voted to recommend approval of establishing permanent special investigators who are civil servants.

DR. LUBKIN MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATION TO ESTABLISH SPECIAL INVESTIGATORS AND AUTHORIZE THE EXECUTIVE OFFICER TO MOVE FORWARD.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Mr. Conran emphasized the one purpose for moving forward with this proposal transition from private investigators to civil servants.

Judge Duvaras asked if this classification required a civil service employee. Mr. Stiger answered in the affirmative.

Dr. Davis, ICAC, asked how long it would take to remove permanent employees. Ms. Powell explained the progressive discipline process including the probationary process.

Bill Howe, CCA, spoke in support of the proposal.

VOTE 6-0.

MOTION CARRIED.

Manipulation Under Anesthesia (MUA)

Dr. Lerner announced that the committee voted to recommend adoption of the proposed regulatory language for MUA.

DR. LUBKIN MOVED TO ADOPT THE RECOMMENDATION OF THE COMMITTEE.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Judge Duvaras recommended that the patient complete and submit an informed consent prior to the procedure taking place. Ms. Powell agreed that it is important to distinguish the responsibilities of the chiropractor from the physician and surgeon.

DR. LUBKIN MOVED TO AMEND HIS ORIGINAL MOTION TO ADOPT THE LANGUAGE WITH THE ADDITION OF A REQUIREMENT OF THE CHIROPRACTIC DOCTOR TO RECEIVE A SIGNED WRITTEN INFORMED CONSENT FROM THE PATIENT OUTLINING THE RISK FACTORS OF THE PROCEDURE.

DISCUSSION: Judge Duvaras asked why the procedure requires two chiropractors. Dr. Lerner explained that the procedure requires two chiropractors to ensure safety. The second chiropractor assists with moving the patient and some manipulation procedures require both chiropractors.

Dr. Davis, ITC, reiterated that his suggested language be included in the proposed regulatory language.

Kristine Schultz, California Chiropractic Association, recommended a technical correction to use the term doctor of chiropractic for all chiropractic regulations.

Kathleen Creason, on behalf of the Osteopathic Physicians & Surgeons of California, opposes the proposed MUA regulations.

Dr. Tyler objected and disagreed with Ms. Creason's comments.

Mr. Conran voiced his concern for the brevity of the proposed language. Mr. Conran would have preferred more details since he is not a chiropractor.

DR. LUBKIN WITHDREW HIS AMENDED MOTION.

DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH THE PROPOSED REGULATOR LANGUAGE FOR MUA IN THE BOARD PACKET AND INCLUDE THE LANGUAGE

PROVIDED BY DR. CHARLES DAVIS ON THE TYPE OF FACILITY AND LEGAL COUNSEL WILL INSERT THE PROPER REFERENCES OF THE HEALTH AND SAFETY CODE AND A PROVISION REQUIRING A WRITTEN CONSENT FROM THE PATIENT OUTLINING THE RISKS OF THE PROCEDURE PRIOR TO THE PROCEDURE BEING PERFORMED.

DR. LERNER SECONDED THE MOTION.

DISCUSSION: None

VOTE 5-0-1

MOTION CARRIED

Administrative Committee

Mr. Conran announced that the committee adopted the following recommendations:

- The Executive Officer pursue a multi-year contract with the Department of Consumer Affairs for administrative, legal, and personnel and other support services.
- Board Members receive state-issued e-mail addresses to conduct Board business.
- Revise the Board Member Administrative Manual to reflect the new officers, the standing committees, update citation of B&P Code section 453

Mr. Conran announced that the Executive Officer terminated the contracts for two investigators after learning they were not licensed by the State of California.

MR. CONRAN MOVED THAT THE BOARD ACCEPT THE ADMINISTRATIVE COMMITTEE RECOMMENDATIONS.

DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: None

VOTE 6-0

MOTION CARRIED.

Announcements

Next Board meeting is scheduled for May 22, 2008 in Sacramento.

Public Comment

Dr. Clum, Life Chiropractic College West, recommended that the enforcement information be further broken down to be more meaningful to the public and to students entering the profession.

Debra Snow expressed her positive feedback on the Board's progress and hopes the Board embraces reform efforts and improvement in accountability to the public.

Bill Howe, California Chiropractic Association, praised the Board and staff for the recent efforts over the past year given the resource shortage.

Future Agenda Items

Judge Duvaras requests the resetting of the time and location of the July and September Board meetings. He expressed concern about the expense of overnight travel and the movement of documents.

Dr. Lerner requests the Scope of Practice Committee take up the issue of chiropractic specialties.

Dr. Charles Davis, International Chiropractic Association of California, requested progress updates on the audit recommendations, chiropractic x-ray, and chiropractic specialties.

Adjournment:

Dr. Lerner adjourned the meeting at 12:27 p.m.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>



BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
Thursday, August 16, 2007
10:00 a.m.

Department of Transportation
4050 Taylor Street
San Diego, CA 92110
619-220-7363

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Acting Executive Officer
LaVonne Powell, DCA Senior Staff Counsel
Marlene Valencia, Staff Services Analyst

CALL TO ORDER

Dr. Tyler called the meeting to order at 10:05 a.m.

ROLL CALL

Dr. Columbu called the roll. All members were present with the exception of Judge Duvaras.

CLOSED SESSION

The Board went into closed session for interviews and possible selection of Executive Officer and also to deliberate on disciplinary matters.

OPEN SESSION

Dr. Tyler called the Board into open session at 10:45 a.m. All members were present with the exception of Judge Duvaras.

Dr. Tyler stated that the deliberations concerning the Executive Officer position has been postponed and will be concluded at the end of the open session meeting.

APPROVAL OF MINUTES

- June 21, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 1, 2007 open session minutes.

MR. CONRAN MOVED TO ADOPT THE JUNE 21, 2007 OPEN SESSION MINUTES. DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

EXECUTIVE OFFICER'S REPORT

Administration

Budget Update

Mr. Stiger stated that the Budget Conference Committee proposed a cut in the Board's budget by 50%, the budget has not passed yet, however if the state budget passes in its current form, we will have to enact immediate cost-saving measures which would include a staffing reduction and a reduction in our cases that go to the Attorney General's office. Services all around would have to be cut in order to meet the level.

Dr. Lerner asked if the Board can issue a statement on behalf of the Board. Ms. Powell suggested writing a letter to the author of the budget bill or the committee stating that cutting our budget will compromise consumer protection because we will have to cut back drastically on our enforcement activities.

DR. LERNER MOVED THAT THE BOARD SUBMIT A LETTER TO THE LEGISLATURE OR THE COMMITTEE REQUESTING EMERGENCY LEGISLATION TO RESTORE THE BUDGET ON THE BASIS THAT THIS IS GOING TO HARM OUR ABILITY TO PROTECT THE CONSUMER WHICH IS OUR NUMBER ONE PURPOSE. DR. LUBKIN SECONDED THE MOTION. MR. CONRAN ADDED THAT IF A LETTER IS TO BE SENT IT SHOULD ALSO BE SENT TO THE LEGISLATIVE LEADERSHIP AS WELL AS THE BUDGET CHAIR AND COPIES TO THE OVERSIGHT COMMITTEE'S AND A COPY TO THE GOVERNOR'S OFFICE. DR. LERNER ACCEPTED THE AMENDMENT. VOTE: 4-0. MR. CONRAN ABSTAINED.

Personnel Update

Mr. Stiger handed out the newest organizational chart. There is one revision to the chart that was included in the Board packet. There are a couple of changes since the last Board meeting. Lavella Matthews has been moved into an out-of-class Staff Services Manager I position. In her role, she will oversee licensing and administrative functions. The purpose of the change was to be sure that licensing had management oversight. It is currently a three month out-of-class with the ability to extend it. Mr. Stiger stated that these changes have been approved by the Consumer Affairs personnel office. As of Friday, August 10, 2007, the Chiropractic Consultant position is now vacant. At this current time, there is no plan to refill the position for a couple of reasons. One, with the budget uncertainties we should start saving money now. Second, we want to take a look at the Enforcement structure and perhaps reclassify the position in order to improve the enforcement operations. Mr. Stiger also announced the promotion of Marlene Valencia to Staff Services Analyst. She will now serve as the Board member liaison.

Mr. Conran inquired about the oversight of the Enforcement Program with the vacant consultant position and a manager that is currently working half-time. Mr. Stiger stated that he oversees the Enforcement program however; the absence of a consultant is more of an issue. Mr. Stiger has asked the Attorney General's office to provide recommendations of good, solid subject matter experts. Several of them have been contacted so that they're aware of our vacancy and that we may be requesting their assistance relating to scope of practice and quality of care questions. Mr. Stiger further stated that this may be an option to use on a permanent basis. Mr. Stiger also stated that these consultants are chiropractors and not state employees.

Dr. Tyler stated that he is thoroughly against having a chiropractic consultant again. He feels that we should aggressively contemplate going back to the way it was prior to 1995. Ms. Powell clarified how the experts would be utilized.

After discussion, it was decided to discuss the chiropractic consultant position at a future Board meeting.

Bureau of State Audits Update

Mr. Stiger reported the Bureau of State Audits have begun their process. Staff has been very responsive to their requests. It is anticipated that this audit will take approximately seven months.

Dr. Columbu suggested writing a response to the legislatures addressing the accusations against the Board. It was decided to place this topic on the agenda for the next Board meeting.

Department of Consumer Affairs

Mr. Stiger stated we just signed a contract with the Department of Consumer Affairs for administrative, legal and investigative services. The contract goes through December 31, 2007.

Dr. Lerner asked what happens to these contracted services if our budget is cut. Mr. Stiger responded that these are critical areas. He continued to state that he has identified which areas to scale back on in order to continue these services.

Enforcement

Statistics

Mr. Stiger reported that some of the enforcement cases are aged and he expects many of these cases will be completed within the next 60 days.

Board Member training on Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell clarified board member questions regarding when to recuse themselves from a case. Ms. Powell continued to provide ongoing training regarding the Bagley-Keene Open Meetings Act.

MISSION STATEMENT

After discussion on the mission statement for the Board, it was decided to table this item for a future meeting.

PROGRAM REPORTS

Licensing

License Statistics

Mr. Stiger referred to the license statistic chart for the last two years.

California Law and Professional Practices Exam (CLPPE) Statistics

Mr. Stiger referred to the CLPPE statistical chart.

DISCUSSION RE LICENSING OF CHIROPRACTIC ASSISTANTS

This item was tabled until the next Board meeting.

The Board recessed for lunch at 12:00p.m.

Dr. Tyler, D.C. called the Board into open session at 1:00 p.m. All Board members were present.

COMMITTEE REPORTS

Administrative Committee

Board Member Procedure Manual

Mr. Conran reported that the Administrative Committee met and discussed the procedure manual. There was lengthy discussion and revisions were suggested.

MR. CONRAN MOVED TO ACCEPT THE BOARD MEMBER ADMINISTRATIVE MANUAL WITH THE CORRECTIONS MADE TODAY. DR. LUBKIN SECONDED THE MOTION. VOTE: 2-3. MOTION FAILED.

MR. LERNER MOVED TO MAKE THE CHANGES AND PRESENT A FINAL DRAFT AT THE NEXT BOARD MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 5-0. MOTION CARRIED.

Ex Parte Policy re Board Member Communications

Mr. Conran stated at the Administrative Committee there was a 3-0 vote to approve the adoption of an Ex Parte Policy by the Board. The concept of an Ex Parte rule is to ensure there is transparency in communications to Board members when there is an issue on the agenda. Mr. Conran introduced Julie Fellmeth, Michael Shames and Steve Alexander to share the views on the Ex Parte Policy. All three guests shared the views on why they support adopting an Ex Parte Policy.

After a lengthy discussion, it was agreed that this item be deferred to the Administrative Committee for design of the Ex Parte and it will be brought back to the Board for further discussion.

Continuing Education Committee

Dr. Lubkin reported that the committee has had a few meetings. The committee is recommending there be due process for denials of a continuing education course. The Board will give the party notice and they will have 10-days to meet with the Executive Officer to address any concerns.

The committee also suggests the concept of having the evaluation of courses be handled by staff rather than the Board members. This will allow the Board members to work towards regulations and administrative changes to improve the process. The committee also discussed going back to a regulatory phase to increase the hours. Dr. Tyler stated that the chiropractic presence is essential in determining the educational requirements because staff is not knowledgeable of all techniques. Dr. Lubkin continued by stating that when there is a denial, the person who is denied will be notified of an exact code section that pertains to the denial.

Dr. Lerner asked the committee to discuss the acceptance of the FCLB policy. Dr. Lubkin stated the committee did discuss this issue and concluded that this needs to be part of the regulation.

MR. CONRAN MOVED TO ACCEPT THE CONTINUING EDUCATION COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Enforcement Committee

Dr. Lubkin reported the committee discussed adding fine authority to the citation program. A letter of admonishment procedure was also discussed. Staff will prepare the language and it will be presented at the next meeting.

DR. LUBKIN MOVED TO ACCEPT THE ENFORCMENT COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Legislative Committee

AB1137

Dr. Lerner reported that AB 1137 did not get out of the Senate, Business and Professions committee and is now dead.

SB801

Dr. Lerner gave a description of bill SB801 and reported that SB801 is moving forward. Dr. Lerner stated the based on the committee's previous recommendation the Board took a position of watch.

DR. COLUMBU MADE A MOTION TO TAKE A NEW POSITION THAT THE BOARD OPPOSES BILL SB801. DR. LERNER SECONDED THE MOTION. Mr. Conran stated that he does not agree that the Board should take opposition to the bill. Dr. Lubkin commented that taking a new position should be done carefully and suggests this go to the committee for thorough discussion. Following public comment from Charles Davis, D.C., Michael Blott, D.C., David Prescott and others, a vote was taken. **VOTE: 4-1. MOTION CARRIED.**

Dr. Lerner asked for clarification of bill SB840. Dr. Lerner recommended that this bill be looked at during the next Legislative Committee meeting.

Manipulation Under anesthesia (MUA)

Dr. Lerner reported that the committee, Mr. Stiger and Ms. Powell met with representatives from Office of Administrative Law (OAL) on July 17, 2007. Ms. Powell stated that the main fault with the way the regulations were written before was that it created a sub-category of licensure. Instead, the regulations should be focused on if you are a chiropractor, what is the standard of care if you are performing MUA. OAL stated that they would need a legal opinion that MUA is in fact, within the scope of practice for chiropractic. That is describing MUA appropriately so that its very clear that the chiropractor is performing the adjustment and is in no way directing the anesthesiologist or the physician surgeon who is sedating the patient. Ms. Powell will provide a legal opinion to the Board by the end of October.

Dr. Lerner commented that at the next MUA Committee meeting, David Prescott will give a 90-minute presentation on Scope of Practice.

DISCUSSION OF BOARD MEETING SCHEDULE AND PETITIONER HEARING DATES

Mr. Stiger indicated that the next scheduled Board meeting will be October 25, 2007. Board business will be held in the morning and petitioner hearings will be in the afternoon.

PUBLIC COMMENT

No public comment.

ADJOURNMENT

Dr. Tyler adjourned the public meeting at 3:31 p.m.

CLOSED SESSION

The Board went into closed session for further discussion regarding the selection of Executive Officer.

The Board briefly returned to open session to announce that the position of Executive Officer has been offered to Brian J. Stiger. Mr. Stiger has temporarily accepted the position until personnel issues can be worked out.

Recruitment and Selection of Vacant Position Update July 11, 2008

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Office Technician Cashier / Front Counter	04/11/08	Complete	Complete	Complete	05/01/08	05/05/08
Office Technician Licensing / CE	04/11/08	Complete	Complete	Complete	04/23/08	05/07/08
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete	05/29/08	06/26/08
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete	6/13/08	07/16/08
Staff Services Manager I Compliance Manager	04/11/08	Complete	Complete	Complete	05/27/08	07/07/08
Staff Services Manager I Lic/CE/Admin Manager	05/05/08	Complete	Complete	Complete	06/06/08	06/24/08
Sup. Spec. Investigator I Field Op. Manager	05/27/08	In Process	In Process			
Office Technician Policy / Admin	07/03/08	In Process	In Process			

Recruitment and Selection of Vacant Position Update
July 11, 2008
(Cont.)

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Spec. Investigator (3)	07/10/08					

BOARD OF CHIROPRACTIC EXAMINERS **LICENSE STATISTICAL DATA**

FY06/07-FY07/08 COMPARISON

LICENSE TYPE	TOTAL LICENSES 6/30/08	TOTAL LICENSES 6/30/07	NET VARIANCE
CHIROPRACTOR	13816	13780	+36
SATELLITES	2360	2200	+160
CORPORATIONS	1320	1285	+35
REFERRALS	17	17	0
TOTALS	17513	17282	+231

JULY 1, 2007 – JUNE 30, 2008

LICENSE TYPE	FORFEITED LICENSES	CANCELLED LICENSES	INACTIVE LICENSES	TOTAL
CHIROPRACTOR	20	281	102	403
SATELLITES	480	1261	n/a	1741
CORPORATIONS	91	5	n/a	96
REFERRALS	0	0	n/a	0
TOTALS	591	1547	102	2240

Definitions:

Forfeiture: Occurs due to failure to renew license within 60 days of license expiration.

Cancellation: Occurs voluntarily or results from failure to renew a license within three years of forfeiture.

Compliance Unit Statistics

Fiscal Year	05/06	06/07	07/08
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Complaints

Received	764	702	665
Pending	834	729	799
Closed with Insufficient Evidence	116	131	106
Closed with No Violation	96	60	78
Closed with Merit	319	200	321
Citations Issued	36	34	28

Accusations

Filed	45	41	14
Revoked	16	27	8
Revoked, Stayed, Probation	31	37	20
Voluntary Surrender of License	8	4	3
Dismissed/Withdrawn	0	3	4

Statement of Issues

Filed	4	11	7
Denied	0	0	0
Probationary License	8	6	6
Withdrawn at Applicants Request	0	2	1
Granted	7	3	0

Probation Cases

Active	188	173	159
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Approval By Ratification of Formerly Approved License Applications
May 16, 2008 – July 22, 2008

Name (First, Middle, Last)			Date Issued	DC#
Jason	Everett	Miller	June 6, 2008	30948
Ginger	Ann	Austin	June 17, 2008	30949
Richard	Ward	Burg	June 17, 2008	30950
Hans	Michael	Castro	June 17, 2008	30951
Paul	Sungmin	Cho	June 17, 2008	30952
Luis	Esteban	Feliu	June 17, 2008	30953
Angela	Kathryn	Fix	June 17, 2008	30954
Lalanya	Katherine	Gawne	June 17, 2008	30955
Gurpreet	Singh	Gill	June 17, 2008	30956
Mark	Alan	Hamilton	June 17, 2008	30957
Glen	Arthur	Jukes	June 17, 2008	30958
Aidan	Katherine	Kinsella	June 17, 2008	30959
Marc	S	Kramer	June 17, 2008	30960
Yumiko		Muroi	June 17, 2008	30961
Mark	James	Sachse	June 17, 2008	30962
Mikael		Sveen	June 17, 2008	30963
Helmer	Jose	Velez	June 17, 2008	30964
Martine	Romi	Wayne	June 17, 2008	30965
Rieko		Yamaji	June 17, 2008	30966
David	Andrew	Yawger	June 17, 2008	30967
Jessie	Vivian	Young	June 17, 2008	30968
Theodore	Michael	Tutkaluk	July 21, 2008	30969
Roberta	Denise	O'Toole	July 21, 2008	30970
Michael	Kelly	Cramer	July 21, 2008	30971
Jedidiah	Todd	Smith	July 21, 2008	30972
Brent	Michael	Handeland	July 21, 2008	30973
Tina		Alamian	July 21, 2008	30974
Kyle	Marie	Burke	July 21, 2008	30975
Antonio	Eduardo	Maya	July 21, 2008	30976
Matthew	Todd	Ormond	July 21, 2008	30977
John	Elijah	Warren	July 21, 2008	30978
Dene	Amena	Schulze-Alva	July 21, 2008	30979
Stephen		Cantor	July 21, 2008	30980
Daniel	Scott	Boswein	July 22, 2008	30981

California Code of Regulations
Title 16

§323. Reciprocity. Interpretation of Section 9 of the Act.

The board makes the following interpretation of Section 9 of the Act which states candidates for licensure are considered to have fulfilled the requirement of reciprocity if they provide the documentation required by the board showing the following:

(a) Graduation from a board approved chiropractic college, and completion of the minimum number of hours and subjects as were required by California law at the time the applicant's license was issued.

(b) Equivalent successful examination in each of the subjects examined in California in the same year as the applicant was issued a license in the state from which he is applying.

(c) They must hold a valid and up-to-date license from the state from which they are reciprocating.

(d) The state from which they are licensed will reciprocate with California.

(e) The board reserves the right to require any additional education or examination for reciprocity.

(f) A nonrefundable application fee of \$25.00.

(g) A fee, as set forth in Section 5 of the Act, if licensure is granted.

(h) Five (5) years of chiropractic practice.

NOTE: Authority cited: Section 1000-4(b), Business and Professions Code. Reference: Section 1000-9, Business and Professions Code.

HISTORY:

1. New section filed 1-4-77; effective thirtieth day thereafter (Register 77, No. 2). For prior history, see Register 76, No. 50.
2. Amendment filed 2-15-79; effective thirtieth day thereafter (Register 79, No. 7).
3. Amendment of subsections (a) and (b) filed 7-30-87; operative 8-29-87 (Register 87, No. 32).
4. New subsection (h) filed 7-25-96; operative 8-24-96 (Register 96, No. 30).

Chiropractic Initiative Act
Board of Chiropractic Examiners

(c) Examinations shall be written, oral, and practical, covering chiropractic as taught in chiropractic schools or colleges, designed to ascertain the fitness of the applicant to practice chiropractic. Said examination shall include at least each of the subjects as set forth in Section 5 hereof. Identity of the applicants shall not be disclosed to the examiners until after examinations have been given final grades. A license shall be granted to any applicant who shall make a general average of 75 percent, and not fall below 60 percent in more than two subjects or branches of the examination and receive a 75 percent score in all parts of the practical examination as designed by the board. Any applicant failing to make the required grade shall be given credit for the branches passed, and may, without further cost, take the examination at the next regular examination on the subject in which he failed. For each year of actual practice since graduation the applicant shall be given a credit of 1 percent on the general average.

(d) An applicant having fulfilled the requirements of Section 5 and paid the fee thereunder, and having obtained a diplomate certificate from the National Board of Chiropractic Examiners, may offer such certificate together with a transcript of grades secured in said national board examination, and the California Board of Chiropractic Examiners may accept same in lieu of all or a portion of the California board examination as determined by the board.

(Initiative Measure, Stats. 1923, p. xc, § 6. Amended by Stats. 1971, c. 1755, p. 3786, § 5; Stats. 1976, c. 263, p. 550, § 5.)

§ 7. Certificate to practice; issuance; practice authorized

One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

(Initiative Measure, Stats. 1923, p. xc, § 7.)

§ 8. Blind persons

No blind person shall be denied admission into any college or school of chiropractic or denied the right to take any examination given by such school or college or denied a diploma or certificate of graduation or a degree or denied admission into any examination for a state license or denied a regular license to practice chiropractic on the ground that he is blind.

(Formerly § 1000-8.1, added by Stats. 1949, c. 500, p. 859, § 1, adopted Nov. 7, 1950. Renumbered § 1000-8 and amended by Stats. 1971, c. 1755, p. 3787, § 7.)

§ 9. Issuance of licenses to licensees of other states

Notwithstanding any provision contained in any other section of this act, the board, upon receipt of the fee specified in Section 5, shall issue a license to any person licensed to practice chiropractic under the laws of another state, provided said state then had the same general requirements as required in this state at the time said license was issued, and provided that such other state in like manner grants reciprocal registration to chiropractic practitioners of this state.

The applicant shall also provide a certificate from the other state stating that he was licensed by that state, that he has not been convicted of unprofessional conduct, and that there is no charge of unprofessional conduct pending against him.

(Initiative Measure, Stats. 1923, p. xc, § 9. Amended by Stats. 1960, c. 14, p. 136, § 2, adopted Nov. 8, 1960. Amended by Stats. 1971, c. 1755, p. 3787, § 8.)



State of Ohio

Ohio State Chiropractic Board

Kelly A. Caudill, Executive Director

TO: Whom It May Concern

FROM: Liz Moore, Executive Assistant *LM*

DATE: May 14, 2008

RE: Endorsement/Reciprocity

The Ohio State Chiropractic Board grants licensure by endorsement/reciprocity on a case by case basis if a licensee does not meet the standard filing requirements for licensure as outline by ORC § 4734.20. The Board does not maintain a list of states that it does or does not reciprocate with.

As stated in ORC § 4734.23 (B)... The state chiropractic board may, for good cause, waive all or part of the educational and testing requirements specified under section 4734.20 of the Revised Code and issue a license to an applicant under this section, if the applicant presents satisfactory proof of being licensed to practice chiropractic in another state or country where the requirements for receipt of the license, on the date the license was issued, are considered by the board to be substantially equivalent to those of this chapter.

A copy of ORC § 4734.20 and ORC § 4734.23 are enclosed for your review.

If you have any questions please do not hesitate to contact this office.

Thank you.

Course Description

CHIROPRACTIC ASSISTANT

Class Description: This two-semester course divides a chiropractic assistant role into administrative and clinical semesters.

During the semester, students will learn either administrative (front office) procedures including: terminology, insurance billing, and CPR certification; or they will learn clinical (back office) procedures including: body structure, physical therapy, vitals, patient testing, x-ray development, and CPR and First Aid certification.

Adults pay a \$50.00 lab fee and a \$35.00 book fee. There is also a \$25 non-refundable registration fee

Recommendations: Type 20 upm.

Students may attend class 6 hours a day to complete in one semester or 3 hours a day to complete in two semesters.

Length: 540 hours

Time: 8 a.m.—11 a.m.
12 p.m.—3 p.m.

POST SECONDARY EDUCATIONAL OPPORTUNITIES

Education & Training after High School - 1, 2, or 4 year or more certificate or degree program such as:

- Business Manager
- Chiropractic
- Physical Therapy



CAREER OPPORTUNITIES

This class provides careers and/or job opportunities in a variety of areas such as:

- Clinical Chiropractic Assistant
- Administrative Office Assistant
- Office Manager

The Sacramento County Office of Education (SCOE) is actively engaged in programs which prepare students for the workforce, whether immediately after graduation or after post-secondary education in a university, community college, technical or trade school.

High school students register with your high school counselor.

Adult students register on-line at www.sacop.org or by calling the Career Center at (916) 228-2721

Teacher: Kathryn Turner

Cell: (916) 807-3122

Email: ktturner@scoe.net

What is Career Technical Education?

The Sacramento County Office of Education, in collaboration with 11 local school districts, believe that all students have the ability to learn and succeed in a relevant, rigorous and engaging curriculum. CTE must provide:

- Standardized Course Work for college, career development, and the workforce
- Engage project-based learning opportunities
- Multiple pathways for college, career, and work
- A curriculum infused with academic coursework
- Sequenced course work in a pathway of learning
- Opportunities to meet UC/CSU requirements for college

California's CTE Model Curriculum Standards are presented in 15 industry sectors of related careers and broad industries.

With each sector there are two or more pathways which details knowledge and technical skills students need to succeed in a



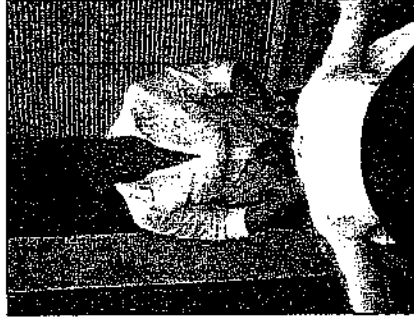
Sacramento County
CTE
Career Technical Education

Sacramento County Office of Education

10474 Mather Boulevard
P.O. Box 269003
Sacramento, CA 95826-9003
Phone: (916) 228-2721
www.sacrop.org

CHIROPRACTIC ASSISTANT

Career Technical Education (CTE)
Regional Occupational Programs



Tel: (916) 228-2721
www.sacrop.org

Chiropractic Assisting ROP Course

FACT SHEET



Sacramento County
ROP
Career Technical Education

The Chiropractic Assistant Regional Occupational Program (ROP) course offered through the Sacramento County Office of Education is the only ROP course of its kind in California. The course taught by Kathy Turner, is entering its 19th year in Sacramento. The program graduates 50 – 60 qualified chiropractic assistants a year.

The Chiropractic assisting course is a 540 hour course. The two-semester course separates a chiropractic assistant's role into administrative and clinical semesters. During the two semesters students learn;

- Administrative (front office) procedures including;
 - terminology
 - insurance billing / private billing
 - telephone / communication
 - Scheduling of appointments and treatment
 - Narrative reports / records / office correspondence
 - Ethics / HIPPA
 - chiropractic philosophy

Each student must successfully complete 135 hours lecture/laboratory, and a 135+ hour externship in a local Chiropractic office under the direction of the doctor of record to receive an administrative assistant skill.

- Clinical (back office) procedures including;
 - body structure
 - physical therapy
 - vitals
 - patient testing
 - X-ray development
 - CPR and First Aid certification
 - escort patients to/from treatment rooms
 - physiotherapy treatments
 - diathermy
 - ultrasound
 - galvanic
 - hydrotherapy
 - chiropractic philosophy

Each student must successfully complete 135 hours lecture/laboratory, and a 135+ hour externship in a local Chiropractic office under the direction of the doctor of record to receive a clinical assistant skill sheet

Students must obtain both the administrative and clinical skills sheets to qualify for a Sacramento ROP Chiropractic Certificate of Completion.

CHIROPRACTIC ASSISTANT - CLINICAL

CR = Classroom LAB/CC = Laboratory/Shop/Community Classroom

CBEDS TITLE: **MEDICAL OFFICE SERVICES**

CBEDS NO: **4242**

HOURS: **Total** **270** **Classroom** **171** **Laboratory/Pre-clinical** **99** **CC/CVE**

DATE: **July 8, 2008**

JOB TITLE:	DOT CODES:	JOB TITLE:	DOT CODES:
Chiropractic Assistant	079.364-010		

COURSE DESCRIPTION: This two-semester course divides a chiropractic assistant's role into administrative and clinical semesters. During the two semesters, students will learn both administrative (front office) procedures, including terminology, insurance billing, and clinical (back office) procedures, including body structure, physical therapy, vitals, patient testing, X-ray development, and receive CPR and First Aid certification.

The Administrative Chiropractic Assistant answers telephones, schedules patients' appointments, and completes insurance billing. The Administrative Chiropractic Assistant is responsible for private pay billing, narrative reports and office correspondence.

The Chiropractic Assistant will aid the doctor during physical examinations of patients, give specified office treatments, keep patient records, write patient histories, escort patients to treatment rooms, give physiotherapy treatments, such as diathermy, galvanic, ultrasound or hydrotherapy under the doctor's directive, take and record patient's vitals and assist in X-ray procedures.

All Chiropractic Assistants will be knowledgeable about chiropractic philosophy and medical ethics.

PREREQUISITES:

- ✓ None

METHOD OF STUDENT EVALUATION:

- ✓ Pre and Post test
- ✓ Student Projects
- ✓ Written work
- ✓ Observation record of student performance
- ✓ Completion of assignments and worksheets

METHOD OF INSTRUCTION:

- ✓ Lecture
- ✓ Group and individual applied projects
- ✓ Demonstration
- ✓ Field Trips
- ✓ Guest Speaker

CHIROPRACTIC ASSISTANT - CLINICAL

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TEXTS USED: **PRIMARY:** *California Chiropractic Journal*
 Chiro-Soft
 Palmer College of Chiropractic
 Chiropractic Assistant Training Manual

SUPPLEMENTAL:

CHIROPRACTIC ASSISTANT - CLINICAL

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I.	INTRODUCTION	CR	LAB/ CC	STANDARDS
	<p>A. Course Goals, Objectives and Expectations</p> <p>B. Class Policies and Procedures</p>	Hours integrated into subject/skill content		
II.	CAREER PLANNING AND MANAGEMENT	CR	LAB/ CC	STANDARDS
	<p>A. Students understand how to make effective decisions, use career information, and manage personal career plans:</p> <ol style="list-style-type: none"> 1. Identify the personal qualifications, interests, aptitudes, knowledge, and skills necessary to succeed in careers. 2. List opportunities and requirements for education, training, and licensure. 3. Develop a career plan that is designed to reflect career interests, pathways, and postsecondary options. 4. Identify the role and function of professional organizations, industry, associations, and organized labor in a productive society. 5. Identify past, present, and future career trends. 6. Identify important strategies for self-promotion in the hiring process, such as job search, applications, cover letter, résumé writing, interviewing skills, and preparation of a portfolio. 	Hours integrated into subject/skill content		Foundation: 3.0
III.	TECHNOLOGY	CR	LAB/ CC	STANDARDS
	<p>A. Students know how to use contemporary and emerging technological resources in diverse and changing personal, community, and workplace environments:</p> <ol style="list-style-type: none"> 1. Identify past, present, and future technological advances as they relate to a chosen career pathway. 2. Use technological resources to gain access to, manipulate, and produce information, products, and services. 3. Discuss the influence of current and emerging technology on selected segments of the economy. 	Hours integrated into subject/skill content		Foundation: 4.0

CHIROPRACTIC ASSISTANT - CLINICAL

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IV.	PROBLEM SOLVING AND CRITICAL THINKING	CR	LAB/ CC	STANDARDS
	<p>A. Students understand how to create alternative solutions by using critical and creative thinking skills, such as logical reasoning, analytical thinking, and problem-solving techniques:</p> <ol style="list-style-type: none"> 1. Apply appropriate problem-solving strategies and critical thinking skills to work-related issues and tasks. 2. Utilize systematic problem-solving models that incorporate input, process, outcome, and feedback components. 3. Use critical thinking skills to make informed decisions and solve problems. 4. Apply decision-making skills to achieve balance in the multiple roles of personal, home, work and community life. 	Hours integrated into subject/skill content		Foundation: 5.0
V.	HEALTH & SAFETY	CR	LAB/ CC	STANDARDS
	<p>A. Students understand health and safety policies, procedures, regulations, and practices, including the use of equipment and handling of hazardous materials:</p> <ol style="list-style-type: none"> 1. Identify the policies, procedures, and regulations regarding health and safety in the workplace, including employers' and employees' responsibilities. 2. Identify critical elements of health and safety practices related to storing, cleaning, and maintaining tools, equipment, and supplies. 	Hours integrated into subject/skill content		Foundation: 6.0
VI.	RESPONSIBILITY AND FLEXIBILITY	CR	LAB/ CC	STANDARDS
	<p>A. Students know the behaviors associated with the demonstration of responsibility and flexibility in personal, workplace, and community settings:</p> <ol style="list-style-type: none"> 1. Demonstrate the qualities and behaviors that constitute a positive and professional work demeanor. 2. Demonstrate personal responsibility. 3. Discuss the need to adapt to varied roles and responsibilities. 4. Discuss how individual actions can affect the larger community. 	Hours integrated into subject/skill content		Foundation: 7.0
VII.	ETHICS AND LEGAL RESPONSIBILITIES	CR	LAB/ CC	STANDARDS
	<p>A. Students understand professional, ethical, and legal behavior consistent with applicable laws, regulations,</p>	Hours integrated into		Foundation: 8.0

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	<p>and organizational norms:</p> <ol style="list-style-type: none"> 1. Identify the major local, district, state, and federal regulatory agencies and entities that affect the industry and how they enforce laws and regulations. 2. Demonstrate the concept and application of ethical and legal behavior consistent with workplace standards. 3. Discuss the role of personal integrity and ethical behavior in the workplace. 	subject/ skill content		
VIII.	LEADERSHIP AND TEAMWORK	CR	LAB/ CC	STANDARDS
	<p>A. Students understand effective leadership styles, key concepts of group dynamics, team and individual decision making, the benefits of workforce diversity, and conflict resolution:</p> <ol style="list-style-type: none"> 1. Identify the characteristics and benefits of teamwork, leadership, and citizenship in the school, community, and workplace settings. 2. Discuss the ways in which professional associations, such as Skills USA, and competitive career development activities enhance academic skills, promote career choices, and contribute to employability. 3. Discuss the benefits of teamwork. 4. Demonstrate multiple approaches to conflict resolution and their appropriateness for a variety of situations in the workplace. 5. Demonstrate respect for individual and cultural differences, and for the attitudes and feelings of others. 6. Communicate ideas to justify positions, persuade and convince others, confirm responsibility, and evaluate existing policies and procedures. 	Hours integrated into subject/ skill content		Foundation: 9.0
IX.	ANATOMY	CR	LAB/ CC	STANDARDS
	<p>A. Muscular System</p> <ol style="list-style-type: none"> 1. Locate insertion of individual muscles 2. Describe muscle function <p>B. Nervous System</p> <ol style="list-style-type: none"> 1. Recognize the different systems 2. Record proper neurological test results <p>C. Skeletal System</p> <ol style="list-style-type: none"> 1. Label the bones on a skeletal chart 2. Describe types of joints 3. Identify parts of a bone 			

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X.	EMERGENCY CARE	CR	LAB/ CC	STANDARDS
	A. Demonstrate proper patient assessment during CPR training <ol style="list-style-type: none"> 1. Demonstrate CPR procedures 2. Demonstrate Heimlich maneuver B. Demonstrate proper patient assessment during First Aid training <ol style="list-style-type: none"> 1. Practice correct splinting technique 2. Analyze patient's wound and use proper bandaging technique 3. Observe sudden illness signs and symptoms of a patient 			
XI.	PATIENT OBSERVATION & REPORTING	CR	LAB/ CC	STANDARDS
	A. Demonstrate proper dark room procedures B. Develop observation skills C. Practice correct methods and procedures for reporting D. Analyze range of motion testing E. Employ scoliosis testing techniques F. Role play patient preparation			

CHIROPRACTIC ASSISTANT - ADMINISTRATIVE

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CBEDS NO: 4242

HOURS: **Total** 270 **Classroom** 192 **Laboratory/Pre-clinical** 78 **CC/CVE** 0

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IX.	BOOKKEEPING TECHNIQUES	CR	LAB/ CC	STANDARDS
	<p>A. Distinguish the correct diagnosis and billing codes</p> <ol style="list-style-type: none"> 1. Recognize the need for billing and diagnosis codes 2. Prepare reports using correct coding <p>B. Practice pegboard bookkeeping</p> <ol style="list-style-type: none"> 1. Analyze bookkeeping entries for balancing 2. Demonstrate legible numbering and lettering 3. Troubleshoot for errors on day sheets <p>C. Apply codes with computer billing</p> <ol style="list-style-type: none"> 1. Differentiate between advantages of pegboard and computer billing 			

CHIROPRACTIC ASSISTANT - ADMINISTRATIVE

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	<ul style="list-style-type: none"> 2. Use the computer to complete a narrative report 3. Demonstrate proper use and protection of a computer <p>D. Input data for billing procedures</p>			
X.	EMERGENCY CARE	CR	LAB/CC	STANDARDS
	<ul style="list-style-type: none"> A. Demonstrate proper patient assessment during CPR training <ul style="list-style-type: none"> 1. Demonstrate CPR procedures 2. Demonstrate the choking rescue techniques 3. Use proper rescue breathing technique 4. Explain the need for personal safety B. Demonstrate proper patient assessment during First Aid training <ul style="list-style-type: none"> 1. Practice correct splinting techniques 2. Analyze patient's wounds and use proper bandaging techniques 3. Observe sudden illness signs and symptoms of a patient 4. Treat according to patient's needs 			
XI.	OFFICE MANAGEMENT	CR	LAB/CC	STANDARDS
	<ul style="list-style-type: none"> A. Practice proper appointment book scheduling techniques <ul style="list-style-type: none"> 1. Review the different types of appointment books and their use B. Role play private pay collections C. Suppose that an account has become past due <ul style="list-style-type: none"> 1. Observe different techniques to arrange for accounts to be paid D. Show professional telephone technique <ul style="list-style-type: none"> 1. Access fellow students for proper diction, tonality and pronunciation 2. Discuss the proper use of the hold button 3. Practice telephone transfers 4. Use telephone message memos E. Practice patient recall <ul style="list-style-type: none"> 1. Define which types of patients need re-calls 2. Illustrate a typical re-call situation 3. Assemble all materials needed for patient re-calls 			
XII.	INSURANCE BILLING	CR	LAB/CC	STANDARDS
	<ul style="list-style-type: none"> A. Summarize the Worker's Compensation Laws for California <ul style="list-style-type: none"> 1. Define the doctor's responsibilities to the patient, insurance carrier and the employer 			

CHIROPRACTIC ASSISTANT - ADMINISTRATIVE

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	<ul style="list-style-type: none">2. Identify the patient's rights and responsibilities concerning worker's compensation3. Recognize the rights and responsibilities of the employer concerning worker's compensation4. Complete the forms needed for a worker's compensation case5. Produce a chart showing Medical Control <p>B. Prepare a complete Personal Injury case file</p> <ul style="list-style-type: none">1. Define what a subpoena is and how it is honored2. Produce a completed lien3. Summarize the use of Authorization to Direct Payment <p>C. Properly complete a Private Insurance claim form</p> <ul style="list-style-type: none">1. Organize the information needed for a completed form2. Use proper billing and diagnosis coding3. Chart the laws governing insurance companies4. Formulate the sequence of the Coordination of Benefits Law			
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SKILL PROFICIENCY SHEET

This skill sheet is designed to indicate, as clearly as possible, the student's knowledge and ability to handle tasks required of this course.

Student's Name Insert Last Name Insert First Name ML
(Last) (First) (MI)

Period of Instruction 01/01/01 01/01/01
From: To:

RELATED INSTRUCTION HOURS: 0 EXTERNSHIP HOURS: 0 TOTAL HOURS: 0

CHIROPRACTIC ASSISTANT ADMINISTRATIVE

1 = Limited skills/knowledge 2 = Has average skills/knowledge 3 = Has excellent skills/knowledge

1	2	3	Office Management	1	2	3	Insurance Billings	1	2	3	Bookkeeping Skills
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Appointment Book Scheduling *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Workers Compensation *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Diagnosis and Billing Codes *2,3,4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Private Pay Collections *2,3,4,5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Personal Injury *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pegboard Bookkeeping *2,3,4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Telephone Techniques *2,4,5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Private Insurance *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Computer Insurance Billing *2,3,4
			Emergency Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Medicare and Medical *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Data Input *2,3,4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CPR Procedures *2,3,4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Insurance Verification *2,3,4,5				Employability
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	First Aid Procedures *2,4,5								Prepare a résumé *1,3,5
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scenario Evaluations And Treatment *2,3,4,5								Participate in mock interview *1,3,5

*Expected Schoolwide Learning Results (ESLRs)

1. Career Planner; 2. Work Ethic Model; 3. Technology User; 4. Problem Solver/Conflict Resolver; 5. Effective Communicator

Instructor's Signature

Date

Memorandum

To: **Brian Stiger, Executive Officer, Board of Chiropractic Examiners,
Department of Consumer Affairs**

From: **Michael Christensen, Legal Intern
Department of Consumer Affairs**

Date: **July 17, 2008**

Re: **License Fees**

You have indicated that the Board wants to raise license fees and have asked how to go about getting approval to raise the fees. The current state of the law is that license fees are not to exceed \$150, pursuant to section 12 of the Chiropractic Initiative Act. Any changes to the maximum amount originally had to be approved by the voters, but section 12.5 (added later by voter approval) permits the legislature to fix the amount *without* voter approval. You are correct that you can use 12.5 to sponsor legislation to raise the fees. It may be helpful to point out that the \$150 maximum has been around since 1983!

I have attached an analysis of the proposition approved by the voters in 1960 that gives the Legislature authority to fix the fees.

Chiropractic Initiative Act
Board of Chiropractic Examiners

The repealed section required recordation of licenses and required a list of licensees be kept by the county clerk, which list was to be open to public inspection.

§ 12. Renewal fee

Licenses issued under the provisions of this section expire at 12 midnight on the last day of the month of birth of licentiates of the board.

On or before July 1, 1991, the board shall establish regulations for the administration of a birth month renewal program. Each person practicing chiropractic within this state shall, on or before the last day of their month of birth of each year, after a license is issued to them as herein provided, pay to the Board of Chiropractic Examiners a renewal fee of not more than one hundred fifty dollars (\$150) as determined by the board. The secretary shall mail to all licensed chiropractors in this state, on or before 60 days prior to the last day of the month of their birth each year, a notice that the renewal fee will be due on or before the last day of the month of their birth next following. Nothing in this act shall be construed to require the receipts to be recorded in like manner as original licenses. The failure, neglect or refusal of any person holding a license or certificate to practice under this act in the State of California to pay the annual fee during the time their license remains in force shall, after a period of 60 days from the last day of the month of their birth automatically work a forfeiture of his or her license or certificate, and it shall not be restored except upon the written application therefor and the payment to the board of a fee of twice the annual amount of the renewal fee in effect at the time the restoration application is filed except that a licentiate who fails, refuses or neglects to pay the annual tax within a period of 60 days after the last day of the month of his or her birth of each year shall not be required to submit to an examination for the reissuance of the certificate.

(Initiative Measure, Stats. 1923, p. xcii, § 12. Amended by Stats. 1947, c. 151, p. 680, § 5, adopted Nov. 2, 1948; Stats. 1960, c. 14, p. 137, § 4, adopted Nov. 8, 1960; Stats. 1975, c. 771, p. 1792, § 2, eff. Sept. 16, 1975; Stats. 1978, c. 306, p. 635, § 2, eff. June 29, 1978; Stats. 1983, c. 533, § 2, eff. July 28, 1983; Stats. 1988, c. 1094, § 1.)

§ 12.5. Authority of legislature to fix fees payable by applicants and licensees and per diem compensation of Board of Chiropractic

The Legislature may by law fix the amounts of the fees payable by applicants and licensees and the amount of the per diem compensation payable to members of the board.

(Added by Stats. 1959, c. 1768, p. 4253, § 2.)

§ 13. Health regulations, death certificates, reports

Chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to the public health, and shall sign death certificates and made reports as required by law to the proper authorities, and such reports shall be accepted by the officers of the departments to which the same are made.

(Initiative Measure, Stats. 1923, p. xcii, § 13.)

§ 14. Receipts; deposit; monthly report; state board of chiropractic examiners' fund; use

The executive officer shall at the end of each month report to the State Controller the total amount of money received by the board from all sources, and shall deposit with the State Treasurer the entire amount of such receipts, and the State Treasurer shall place the money so received in a special fund, to be known as the "State Board of Chiropractic Examiners' Fund". Such fund shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this act, upon proper claims approved by said board or a finance committee thereof.

(Initiative Measure, Stats. 1923, p. xcii, § 14. Amended by Stats. 1971, c. 1755, p. 3787, § 10.)

Amendments to Constitution

and

Proposed Statutes

with

Arguments Respecting the Same

*To be Submitted to the Electors of the State of California
at the General Election on*

Tuesday, November 7, 1922

*Index, ballot titles with numbers, and certificate appear in last pages
Proposed changes in provisions are printed in black-faced type
Provisions proposed to be repealed are printed in italics*

Compiled by
LEGISLATIVE COUNSEL BUREAU
and distributed by
SECRETARY OF STATE

CALIFORNIA STATE PRINTING OFFICE
SACRAMENTO, 1922

CHIROPRACTIC. Initiative Act. Creates Board of Chiropractic Examiners, appointed by Governor and paid from receipts under act; prescribes powers and duties thereof; prohibits practice of chiropractic without license therefrom, authorizing issuance thereof to certain chiropractic graduates and establishing prerequisites of study and other conditions to such issuance; provides for revocation of such licenses; declares chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to public health, shall sign death certificates and make reports as required by law; prescribes penalties and repeals conflicting legislation.

YES

NO

Sufficient qualified electors of the State of California present to the secretary of state this petition and request that a proposed measure, as hereinafter set forth, be submitted to the people of the State of California for their approval or rejection, at the next ensuing general election. The proposed measure is as follows:

PROPOSED LAW.

(Proposed changes from provisions of present laws are printed in black-faced type.)

An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the state board of chiropractic examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith.

The people of the State of California do enact as follows:

Section 1. A board is hereby created to be known as the "state board of chiropractic examiners," hereinafter referred to as the board, which shall consist of five members, citizens of the State of California, appointed by the governor. Each member must have pursued a resident course in a regularly incorporated chiropractic school or college, and must be a graduate thereof and hold a diploma therefrom. Each member of the board first appointed hereunder shall have practiced chiropractic in the State of California for a period of three years next preceding the date upon which this act takes effect, thereafter appointees shall be licentiates hereunder. No two persons shall serve simultaneously as members of said board, whose first diplomas were issued by the same school or college of chiropractic, nor shall more than two members be residents of any one county of the state. And no person connected with any chiropractic school or college shall be eligible to appointment as a member of the board. Each member of the board, except the secretary, shall receive a per diem of ten dollars for each day during which he is actually engaged in the discharge of his duties, together with his actual and necessary traveling expenses incurred in connection with the performance of the duties of his office, such per diem traveling expenses and other incidental expenses of the board or of its members to be paid out of the funds of the board hereinafter defined and not from the state's taxes.

Sec. 2. Within sixty days of the date upon which this act takes effect, the governor shall appoint the members of the board. Of the members first appointed, one shall be appointed for a term of one year, two for two years, and two for three years. Thereafter, each appointment shall be for the term of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. Each member shall serve until his successor has been appointed and qualified. The governor may remove a member from the board after receiving sufficient proof of the inability or misconduct of said member.

Sec. 3. The board shall convene within thirty days after the appointment of its members, and

shall organize by the election of a president, vice-president and secretary, all to be chosen from the members of the board. Thereafter elections of officers shall occur annually at the January meeting of the board. A majority of the board shall constitute a quorum.

It shall require the affirmative vote of three members of said board to carry any motion or resolution, to adopt any rule, or to authorize the issuance of any license provided for in this act. The secretary shall receive a salary to be fixed by the board in an amount not exceeding one thousand dollars per annum, but not per diem, together with his actual and necessary traveling expenses incurred in connection with the performance of the duties of his office, and shall give bond to the state in such sum with such sureties as the board may deem proper. He shall keep a record of the proceedings of the board, which shall at all times during business hours be open to the public for inspection. He shall keep a true and accurate account of all funds received and of all expenditures incurred or authorized by the board, and on the first day of December of each year he shall file with the governor a report of all receipts and disbursements and of the proceedings of the board for the preceding fiscal year.

Sec. 4. The board shall have power:

(a) To adopt a seal, which shall be affixed to all licenses issued by the board.

(b) To adopt from time to time such rules and regulations as the board may deem proper and necessary for the performance of its work, copies of such rules and regulations to be filed with the secretary of state for public inspection.

(c) To examine applicants and to issue and revoke licenses to practice chiropractic, as herein provided.

(d) To summon witnesses and to take testimony as to matters pertaining to its duties; and each member shall have power to administer oaths and take affidavits.

(e) To do any and all things necessary or incidental to the exercise of the powers and duties herein granted or imposed.

Sec. 5. It shall be unlawful for any person to practice chiropractic in this state without a license so to do. Any person wishing to practice chiropractic in this state shall make application to the board fifteen days prior to any meeting thereof, upon such form and in such manner as may be provided by the board. Each application must be accompanied by a license fee of twenty-five dollars and a certificate showing good moral character of the applicant. Except in the cases herein otherwise prescribed, each applicant shall be a graduate of an incorporated chiropractic school or college which teaches a course of not less than two thousand four hundred hours, extended over a period of three school terms of at least six months each, and must give satisfactory proof of having attended not less than ninety per cent of said two thousand four hundred hours, and shall present to the board at the time of making such application, a diploma from a high school, or proof, satisfactory to the board of education equivalent in training power to a high school course.

The schedule of minimum educational requirements to enable any person to practice chiro-

practic in this state is as follows, to wit, except as herein otherwise provided:

Anatomy	600 hours
Histology	100 hours
Elementary chemistry and toxicology	100 hours
Physiology	200 hours
Bacteriology	100 hours
Hygiene and sanitation	100 hours
Pathology	200 hours
Diagnosis or analysis	400 hours
Chiropractic theory and practice	500 hours
Obstetrics and gynecology	100 hours

Total 2400 hours

Sec. 6. (a) The board shall meet as a board of examiners on the first Tuesday following the second Monday of January and July of each year, and at such other times and places as may be found necessary for the performance of their duties. The office of the board shall be in the city of Sacramento. Sub-offices may be established in Los Angeles and San Francisco, and such records as may be necessary may be transferred temporarily to such sub-offices. Legal proceedings against the board may be instituted in any one of said three cities.

(b) Each applicant shall be designated by a number instead of the name, so that the identity will not be disclosed to the examiners until the papers are graded.

(c) All examinations shall be in writing, except in cases herein otherwise prescribed, and shall be practical in character, as taught in chiropractic schools or colleges, and designed to ascertain the fitness of the applicant to practice chiropractic. Said examinations shall be in each of the subjects as set forth in section five hereof. A license shall be granted to any applicant who shall make a general average of seventy-five per cent, and not fall below sixty per cent in more than two subjects or branches of said examination. Any applicant failing to make the required grade shall be given credit for the branches passed, and may, without further cost, take the examination at the next regular examination on the subjects in which he failed. For each year of actual practice since graduation the applicant shall be given a credit of one per cent on the general average.

Sec. 7. One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

Sec. 8. Any person who shall have practiced chiropractic for two years after graduation from a chiropractic school or college, one year of which shall have been in this state preceding the date upon which this act takes effect, or any person who graduated from a chiropractic school or college prior to January 1, 1922, and who shall present to the board satisfactory proof of good moral character and having pursued a resident course of not less than two thousand hours in a legally incorporated chiropractic school or college, shall be given a practical and clinical examination in chiropractic philosophy and practice, and if he, or she, make a grade of seventy-five per cent in such examination, the board shall grant a license to said applicant to practice chiropractic in this state under the provisions of this act; provided, however, that application for said license is made within six months of the date upon which this act takes effect and that each applicant shall pay to the secretary of the board the sum of twenty-five dollars.

Sec. 9. Notwithstanding any provision contained in any other section of this act the board, upon receipt of the fee of twenty-five dollars, shall issue a license to any of the following named persons:

(a) To each member of the board.

(b) To any person licensed to practice chiropractic under the laws of another state, having the same general requirements as prescribed in this act; and provided, further, that such other state in like manner grants reciprocal registration to chiropractic practitioners of this state.

Sec. 10. (a) The board shall refuse to grant, or may revoke, a license to practice chiropractic in this state, or may cause a licensee's name to be removed from all records of licensed practitioners of chiropractic in this state, upon any of the following grounds, to wit:

The employment of fraud or deception in applying for a license or in passing an examination as provided in this act; the practice of chiropractic under a false or assumed name; or the personation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him for the performance of his professional duties; the advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed; or the advertising, directly, indirectly or in substance, upon any card, sign, newspaper advertisement, or other written or printed sign or advertisement, that the holder of such license or any other person, company or association by which he or she is employed, or in whose service he or she is, will treat, cure, or attempt to treat or cure, any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, for lost manhood, sexual weakness or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of any person, company or association so advertising. Any person who is licentiate, or who is an applicant for a license to practice chiropractic, against whom any of the foregoing grounds for revoking or refusing a license is presented to the board with a view of having the board revoke or refuse to grant a license, shall be furnished with a copy of the complaint, and shall have a hearing before the board in person or by an attorney, and witnesses may be examined by the board respecting the guilt or innocence of the accused. The secretary on all cases of revocation shall enter on his register the fact of such revocation, and shall certify the fact of such revocation under the seal of the board to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person the following:

"This certificate was revoked on the _____ day of _____, 19____, giving the day, month and year of such revocation in accordance with said certification to him by said secretary. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all proceedings of said board in the matter of said revocation.

(b) At any time after two years following the revocation or cancellation of a license or registration under this section, the board may, by a majority vote, reissue said license to the person affected, restoring him to, or conferring on him all the rights and privileges granted by his original license or certificate. Any person to whom such rights have been restored shall pay to the secretary the sum of twenty-five dollars upon the issuance of a new license.

Sec. 11. (a) Every person who shall receive a license from the board shall have it recorded in the office of the county clerk of the county in which he resides, and shall have it likewise recorded in the counties into which he shall subsequently move for the purpose of practicing chiropractic.

(b) The failure or the refusal on the part of the holder of a license to have it recorded before he shall begin to practice chiropractic in this state, after having been notified by the board to do so, shall be sufficient ground to revoke or cancel a license and to render it null and void.

(c) The county clerk of each county in this state shall keep for public inspection, in a book provided for that purpose, a complete list and

description of the licenses recorded by him. When any such license shall be presented to him for record he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record.

Sec. 12. Each person practicing chiropractic within this state shall, on or before the first day of January of each year, after a license is issued to him as herein provided, pay to said board of chiropractic examiners a renewal fee of two dollars. The secretary shall, on or before November first of each year, mail to all licensed chiropractors in this state a notice that the renewal fee will be due on or before the first day of January next following. Nothing in this act shall be construed to require the receipts to be recorded in like manner as original licenses. The failure, neglect or refusal of any person holding a license or certificate to practice under this act in the State of California to pay said annual fee of two dollars during the time his or her license remains in force shall, after a period of sixty days from the first day of January of each year, ipso facto, work a forfeiture of his or her license or certificate, and it shall not be restored except upon the written application therefor and the payment to the said board of a fee of ten dollars, except that such licensee who fails, refuses or neglects to pay such annual tax within a period of sixty days after the first day of January of each year shall not be required to submit to an examination for the reissuance of such certificate.

Sec. 13. Chiropractic licensees shall observe and be subject to all state and municipal regulations relating to all matters pertaining to the public health, and shall sign death certificates and make reports as required by law to the proper authorities, and such reports shall be accepted by the officers of the departments to which the same are made.

Sec. 14. All moneys received by the board under this act shall be paid to the secretary of said board, who shall give a receipt for the same and shall at the end of each month report to the state controller the total amount of money received by him on behalf of said board from all sources, and shall at the same time deposit with the state treasurer the entire amount of such receipts; and the state treasurer shall place the money so received in a special fund, to be known as the "state board of chiropractic examiners' fund," which fund is hereby created. Such fund shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this act, upon proper claims approved by said board or a finance committee thereof.

Sec. 15. Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D. C." or any word or title to induce, or tending to induce belief that he is engaged in the practice of chiropractic, without first complying with the provisions of this act; or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor," or "D. C." immediately following his name, or the use of the letters "M. D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the word "osteopath," or the letters "D. O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both.

Sec. 16. Nothing in this act shall be construed to prohibit service in case of emergency, or the domestic administration of chiropractic, nor shall this act apply to any chiropractor from any other state or territory who is actually consulting with a licensed chiropractor in this state; provided, that such consulting chiropractor shall not open an office or appoint a place to

receive patients within the limits of the state; nor shall this act be construed so as to discriminate against any particular school of chiropractic, or any other treatment; nor to regulate, prohibit or apply to any kind of treatment by prayer; nor to interfere in any way with the practice of religion. Nor shall this act apply to persons who are licensed under other acts.

Sec. 17. It shall be the duty of the several district attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this act. It shall be the duty of the secretary of the board, under the direction of the board, to aid attorneys in the enforcement of this act.

Sec. 18. Nothing herein shall be construed as repealing the "medical practice act" of June 2, 1913, or any subsequent amendments thereof, except in so far as that act or said amendments may conflict with the provisions of this act as applied to persons licensed under this act, to which extent any and all acts or parts of acts in conflict herewith are hereby repealed.

Sec. 19. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The electors hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

EXISTING PROVISIONS.

Sections seven, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-two and twenty-four of the state medical practice act, approved June 2, 1913, as amended, which is proposed to be modified in so far as the act relates to issuance of certificates to chiropractors and regulation of the practice of chiropractic, read as follows:

(Provisions differing from proposed chiropractic act are printed in italics.)

Sec. 7. Every applicant for a certificate shall pay to the secretary of the board a fee of twenty-five dollars (\$25), which shall be paid to the treasurer of the board by said secretary. In case the applicant's credentials are insufficient or in case he does not desire to take the examination, the sum of ten dollars (\$10) shall be retained, the remainder of the fee being returnable on application.

Sec. 9. Every applicant must file with the board, at least two weeks prior to the regular meeting thereof, satisfactory testimonials of good moral character, and a diploma or diplomas issued by some legally chartered school or schools approved by the board, the requirements of which school or schools shall have been at the time of granting such diploma or diplomas in no degree less than those required under this act, or satisfactory evidence of having possessed such diploma or diplomas, and must file an affidavit stating that he is the person named in said diploma or diplomas, and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation; * * * provided, further, that an applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each such course to have been of not less than thirty-two weeks duration, but not necessarily pursued continuously or consecutively. * * *

The said application shall be made upon a blank furnished by said board and it shall contain such information concerning the medical instruction and the preliminary education of the applicant as the board may by rule prescribe. In addition to the requirements hereinabove provided for, applicants for any form of certificate hereunder shall present to said board at the time of making such application a diploma from a California high school or other school in the State of California requiring and giving a full four years' course of same grade, or other schools elsewhere, requiring and giving a full four years' standard high school course, or its equivalent, approved by the board, together

with satisfactory proof that he is the lawful holder of such diploma, and that the same was procured in the regular course of instruction. The passing of an examination before the entrance examining board for the entrance to the academic department of the University of California, or Stanford University or the University of Southern California, or the possession of documentary evidence of admission to the academic department of such institutions as a regular student or in full standing shall be sufficient basic or preliminary educational qualifications. In lieu of such diploma, the applicant may present: (1) a certificate from the college entrance examination board, or the college examining board of any state or territory showing that such applicant has successfully passed the examination of said board; or (2) if such applicant be thirty years or more of age he may show to the satisfaction of the board of medical examiners proof of preliminary education equivalent in training power to the foregoing requirements.

Sec. 10. Applicants for any form of certificate shall file satisfactory evidence of having pursued in any legally chartered school or schools, approved by the board, a course of instruction covering and including the following minimum requirements:

* * * * *

For a "Drugless Practitioner Certificate."

Group 1. 600 hours.	
Anatomy	485 hours
Histology	115 hours
Group 2. 270 hours.	
Elementary chemistry and toxicology	70 hours
Physiology	200 hours
Group 3. 235 hours.	
Elementary bacteriology	40 hours
Hygiene	45 hours
Pathology	150 hours
Group 4. 370 hours.	
Diagnosis	370 hours
Group 5. 260 hours.	
Manipulative and mechanical therapy	260 hours
Group 6. 265 hours.	
Gynecology	100 hours
Obstetrics	165 hours
Total	2,000 hours

* * * * *

In the course of study herein outlined the hours required shall be actual work in the classroom, laboratory, clinic or hospital, and at least eighty (80) per cent of actual attendance shall be required; provided, that the hours herein required in any subject need not exceed seventy-five (75) per cent of the number specified, but that the total number of hours in all the subjects of each group shall not be less than the total number specified for such group.

Sec. 11. In addition to above requirements,

All applicants for "drugless practitioner certificates" must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. General diagnosis.
4. Pathology and elementary bacteriology.
5. Obstetrics and gynecology.
6. Toxicology and elementary chemistry.
7. Hygiene and sanitation.

All examinations shall be practical in character and designed to ascertain the applicant's fitness to practice his profession, and shall be conducted in the English language, and at least a portion of the examination in each of the subjects shall be in writing. The board in its discretion upon the submission of satisfactory proof from the applicant that he is unable to meet the requirements of the examination in the English language, may allow the use of an interpreter either to be present in the examination room or to thereafter interpret and transcribe the answers of the applicant. The selection of such interpreter is to be left entirely to the board and the expenses thereof to be borne by

the applicant, the payment therefor to be made before such examination is held. There shall be at least ten questions on each subject, the answers to which shall be marked on a scale of zero to one hundred. Each applicant must obtain no less than a general average of seventy-five per cent, and not less than sixty per cent in any two subjects; provided, that any applicant shall be granted a credit of one per cent upon the general average for each year of actual practice since graduation; provided, further, that any applicant for "drugless practitioner certificate" obtaining seventy-five per cent each in five subjects shall be subsequently re-examined in those subjects only in which he failed, and without additional fee. Any person who at any time prior to January 1, 1916, shall pay to the secretary of said board the fee of twenty-five dollars and submit satisfactory proof of good moral character and of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and satisfactory proof of three years of actual practice of a drugless system of the healing art, such three years of actual practice to have been in the State of California, shall be admitted to the drugless practitioner examination; * * * Any one who shall pay the fee of fifty dollars to the secretary of the board prior to January 1, 1916, and submits to the board satisfactory proof of good moral character and proof of six years' actual practice of a drugless system of the healing art, three years of which must have been in the State of California, and satisfactory proof of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and upon proof of competency in a drugless system may be granted a certificate to practice a drugless system in this state; * * *

The examination papers shall form a part of the records of the board, and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. The secretary of the board shall in no instance participate as an examiner in any examination held by the board. All questions on any subject in which examination is required under this act shall be provided by the board of medical examiners upon the morning of the day upon which examination is given in such subject, and when it shall be shown that the secretary or any member of the board has in any manner given information in advance of or during examination to any applicant it shall be the duty of the governor to remove such person from the board of medical examiners, or from the office of secretary.

All certificates issued hereunder must state the extent and character of practice which is permitted thereunder and shall be in such form as shall be prescribed by the board.

Sec. 13. Said board must also issue a certificate to practice a system or mode of treating the sick or afflicted recognized by this act or any preceding practice act in the State of California, to any applicant, without any examination, authorizing the holder thereof to practice a system or mode of treating the sick or afflicted in the State of California, upon payment of a registration fee of one hundred dollars, upon the following terms and conditions and upon satisfactory proof thereof, viz: The applicant shall produce a certificate entitling him to practice a system or mode of treating the sick or afflicted, as provided in this act or any preceding practice act of the State of California, issued either by the medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practice a system or mode for treating the sick or afflicted either in the District of Columbia or in any state or territory of the United States, or if such certificate shall have been lost, then a copy thereof, with proof satisfactory to the board of medical examiners of the State of California that the copy is a correct copy. Said certificate must not have been issued to such applicant

prior to the first day of August, 1901, and the requirements from the college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice a system or mode of treating the sick or afflicted shall not have been at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a similar certificate to practice a system or mode of treating the sick or afflicted in the State of California at the date of the issuance of such certificate, or which may hereafter be required by law and which may be in force at the date of the issuance of any such certificate; and provided, further, that said applicant shall furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the State of California showing what the requirements were of the college and of the board, issuing such certificate at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the State of California and any other or further examination or investigation which said board may see fit to make on its own part, it shall be found that the requirements of the board issuing such certificate were, when said certificate was issued, in any degree or particular less than the requirements provided by the law of the State of California at the date of the issuance of such certificate or that the applicant has not been a resident of the state from which the application is based for a period of one year subsequent to the issuance of such certificate he will not be entitled to practice within the State of California without an examination. An oral examination shall not be deemed to be of equal merit with a written examination and no certificate shall be issued in the case where a written examination was given in California and an applicant was given an oral examination in another state at the same time. The board is hereby authorized to enter into a contract or contracts of reciprocity with other states wherein the standard of such states is not in any degree or particular less than were the requirements in the State of California in the same year, for the issuance of a certificate to practice a system or mode of treating the sick or afflicted, such certificate to be similar in scope of practice as the certificate issued in the other state; provided, however, that an application based upon a certificate to practice any system or mode of treating the sick or afflicted issued in the District of Columbia or in any state or territory prior to March 4, 1901, if refused or denied by reason of the insufficiency of the standard of such state or territory then such applicant may have the privilege of either a written or oral examination before the board at the option of the applicant.

Sec. 14. Said board must refuse a certificate to any applicant guilty of unprofessional conduct. On the filing with the secretary of a sworn complaint, charging the applicant with having been guilty of unprofessional conduct, the secretary must forthwith issue a citation, under the seal of the board, and make the same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant when and where the charges of said unprofessional conduct will be heard and that the applicant shall file his written answer, under oath, within twenty days next after the service on him of said citation or that default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing may be compelled by subpoenas issued by the secretary of the board under its seal. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citation and subpoenas generally, and all the provisions of the statutes of this state then in force relating to subpoenas and to citations are hereby made applicable to the subpoenas and citations provided for herein. Upon

the secretary's certifying to the fact of refusal of any person to obey a subpoena or citation to the superior court of the county in which the service was had, said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempts for disobedience of process of the court, and should said court find that the subpoena or citation has been legally served, and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct, arising under this act, depositions of witnesses may be taken, the same as in civil cases and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made applicable to the taking of depositions under this act. If the applicant shall fail to file with the secretary of said board his answer, under oath, within twenty days after service on him of said citation, or within such further time as the board may allow, and the charges on their face shall be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such proper evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. Whenever any holder of a certificate herein provided for is guilty of unprofessional conduct, as the same is defined in this act, and the said unprofessional conduct has been brought to the attention of the board granting said certificate, in the manner hereinafter provided or whenever a certificate has been procured by fraud or misrepresentation or issued by mistake or that the certificate upon which a reciprocity certificate has been issued was procured by fraud or misrepresentation or issued by mistake or the person holding such certificate is found to be practicing contrary to the provisions thereof and of this act, it shall be the duty of the board and the board shall have power to suspend the right of the holder of said certificate to practice for a period not exceeding one year or to place the holder of said certificate upon probation or suspend judgment in such cases or revoke his certificate, or take such other action in relation to the punishment of the holder of said certificate as in its discretion it may deem proper. In the event of such suspension, the holder of such certificate shall not be entitled to practice thereunder during the term of suspension; but, upon the expiration of the term of said suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it shall be established to the satisfaction of the board that said person so suspended from practice, has, during the term of such suspension, practiced in the State of California, in which event the board shall revoke the certificate of such person. No such suspension or revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of suspension or revocation shall enter on his register the fact of such suspension or revocation, as the case may be, and shall certify the fact of such suspension or revocation under the seal of the board, to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "The holder of this certificate was on the _____ day of _____ suspended for _____," or, "This certificate was revoked on the _____ day of _____ as the case may be, giving the day, month and year of such revocation or length of suspension, as the case may be, in accordance with said certification to him by said secretary. The record of such suspension or revocation so made by said county clerk shall be prima facie evidence

of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said suspension or revocation; provided, further, that the holder of any certificate which has been revoked or suspended by the board of medical examiners, may within twenty days after receiving notice of said revocation or suspension of his said license, appeal to the superior court of the State of California in the county or city and county in which such suspension or revocation was made by the board of medical examiners. Upon such appeal being taken by such person whose license has been revoked or suspended by the board of medical examiners in accordance with the provisions of this act, the said superior court shall have full power to review all of the proceedings and testimony taken in said hearing before the board of medical examiners, and to inquire into the sufficiency of the evidence upon which such suspension or revocation was made. If the court finds the evidence sufficient to sustain the judgment of the board, said judgment shall be upheld and affirmed, and if the court deems such evidence insufficient to justify the judgment of the board of medical examiners in revoking or suspending the license of the petitioner, said superior court shall have full power to annul or reverse said judgment. The words "unprofessional conduct" as used in this act, are hereby declared to mean:

First—The procuring or aiding or abetting or attempting or agreeing or offering to procure a criminal abortion.

Second—The wilful betraying of a professional secret.

Third—All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety.

Fourth—All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed.

Fifth—Conviction of any offense involving moral turpitude in which case the record of such conviction shall be conclusive evidence.

Sixth—Habitual intemperance or excessive use of cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, novocaine or chloral hydrate or any of the salts, derivatives or compounds of the foregoing substances or the prescribing, selling, furnishing, giving away or offering to prescribe, sell, furnish, or give away such substances to a habitue who is not under the direct personal and continuous treatment and care of the physician for the cure of the above mentioned drugs.

Seventh—The personation of another licensed practitioner or permitting or allowing another person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

Seventh (a)—Employing directly or indirectly any suspended or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted or the aiding or abetting any unlicensed person to practice any system or mode of treating the sick or afflicted.

Eighth—The use, by the holder of any certificate, in any sign or advertisement in connection with his said practice or in any advertisement or announcement of his practice, of any fictitious name, or any name other than his own.

Ninth—The use, by the holder of a "drugless practitioner certificate" of drugs or what are known as medicinal preparations, in or upon any human being, or the severing or penetrating by the holder of said "drugless practitioner certificate" of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord.

Tenth—Advertising, announcing or stating, directly, indirectly, or in substance, by any sign, card, newspaper, advertisement or other written or printed sign or advertisement, that the holder of such certificate or any other person, company, or association by which he is employed or in whose service he is, will cure or attempt to cure, or will treat, any venereal disease, or will cure or attempt to cure or treat any person or

persons for any sexual disease, for leprosy, manhood, sexual weakness, or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of, any person, firm, association, or corporation so advertising, announcing or stating.

Eleventh—The use by the holder of any certificate of any letter, letters, word, words, or term or terms used either as prefix or affix or suffix indicating that such certificate holder is entitled to practice a system or mode of treating the sick or afflicted for which he was not licensed in the State of California.

Twelfth—The employment of "cappers" or "steerers" or other persons in procuring practice for a practitioner for a system or mode of treating the sick or afflicted provided for in this act.

Sec. 15. Every person holding a certificate under the laws of this state authorizing him to practice any system or mode of treating the sick or afflicted in this state must have it recorded in the office of the county clerk of the county or counties in which the holder of said certificate is practicing his profession, and the fact of such recordation shall be endorsed on the certificate by the county clerk recording the same. Any person holding a certificate as aforesaid, who shall practice or attempt to practice any system or mode of treating the sick or afflicted in this state, without having first filed his certificate with the county clerk, as herein provided, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter designated in this act.

Sec. 16. The county clerk shall keep in a book provided for the purpose a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours.

Sec. 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor," the letters or prefix "Dr.," the letters "M. D.," or any other term or letters indicating or implying that he is a doctor, physician, surgeon or practitioner, under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law without having at the time of so doing a valid unrevoked certificate as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as designated in this act.

Sec. 18. Any person, or any member of any firm, or official of any company, association, organization or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as designated in this act, who, individually or in his official capacity, shall himself sell or barter, or offer to sell or barter, any certificate authorized to be granted hereunder, or any diploma, affidavit, transcript, certificate or any other evidence required in this act for use in connection with the granting of certificates or diplomas, or who shall purchase or procure the same either directly or indirectly with intent that the same shall be fraudulently used, or who shall with fraudulent intent alter any diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a diploma or certificate required hereunder or who shall use or attempt to use fraudulently any certificate, transcript, affidavit, or diploma, whether the same be genuine or false, or who shall practice or attempt to practice any system or treatment of the sick or afflicted, under a false or assumed name, or any name other than that prescribed by the board of medical examiners of the State of California on its certificate issued to such person authorizing him to administer such treatment, or who shall assume any degree or title not conferred upon him in the manner and by the authority recognized in this act, with intent to represent falsely that he has received such degree or title, or who shall wilfully make any false statement on any application for examination, license or regis-

traction under this act, or who shall engage in the treatment of the sick or afflicted without causing to be displayed in a conspicuous manner and in a conspicuous place in his office the name of each and every person who is associated with or employed by him in the practice of medicine and surgery or other treatment of the sick or afflicted, or who shall, within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all such persons associated with or employed by him or by any company or association with which he is or has been connected at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person or persons, or said employee or employees, is or are, or has or have been practicing medicine or surgery, or any other system of treatment of the sick or afflicted. It shall be the duty of any person or persons upon whom the board of medical examiners may make a demand for the name or names and address or addresses of a person or persons associated or employed by him or them to make affidavit that there are no such person or persons associated or employed by him or them, if such be the fact; provided, that such affidavit shall not be used as evidence against said person or employee in any proceedings under this action.

Sec. 19. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in or entitled to, such certificate, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery.

Sec. 22. Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies; nor shall this act apply to any commissioned medical officer in the United States army, navy or marine hospital, or public health service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry. Nor shall this act apply to any practitioner from another state or territory, when in actual consultation with a licensed practitioner of this state, if such practitioner is, at the time of such consultation, a licensed practitioner in the state or territory in which he resides; provided, that such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of this state. Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion. Nothing in this act shall be construed to prevent a student regularly matriculated in any legally chartered school or schools approved by the board from treating without compensation to such student the sick or afflicted as a part of his course of study.

Sec. 24. This act when referred to, cited or amended may be designated as the state medical practice act, and for a violation of any provision of this act, the said violator shall be guilty of a misdemeanor, unless otherwise specifically provided in this act, and shall be punished by a fine of not less than one hundred dollars nor more than six hundred dollars or by imprisonment for a term of not less than sixty days nor more than one hundred eighty days or by both such fine and imprisonment. The fines or forfeitures of bail in any case wherein any person is charged with a violation of the provisions of this act shall be paid upon the collection by the proper officer of the court seventy-five per cent thereof to the state treasurer to be deposited to the credit of the contingent fund of the board of medical examiners and such payment to said treasurer shall be made without placing such fine or forfeiture of bail in any special or contingent or general fund of any county, city and county, city, or township. The balance or twenty-five per cent of such fines or forfeitures of bail shall be paid to the county wherein the case is pending.

ARGUMENT IN FAVOR OF PROPOSED CHIROPRACTIC ACT.

Your vote "Yes" on the Chiropractic Initiative Bill is urged for many reasons, some of which are set forth herein, and all of which are consistent with American ideals, just to all and do injury to none.

Under this bill there will be a board of five competent chiropractors, appointed by the Governor, to examine and license chiropractors. No chiropractor will be licensed without examination. The board will be self-sustaining, incurring no additional expense to the taxpayers. It provides for high and proper standards of chiropractic education, a high school diploma or its equivalent, requires four hundred hours more than drugless section of present Medical Act, conforms to all general health laws administered by the board of health and prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors, thus guaranteeing to the people competency of chiropractors and protection from the ignorant or unscrupulous, which the medical law, administered by medical men, does not and can not do.

The teachings and practice of chiropractic are admittedly different from those of medicine, therefore, the members of the Medical Board, who are without training in the science of chiropractic, have never studied it, do not practice it, brand it as unscientific and absurd, are its competitors, and desire only to destroy it, can not intelligently and without prejudice examine the chiropractor in his system of practice.

To illustrate: It would be as reasonable to permit the Mikado to direct our shipbuilding and examine U. S. Naval officers as to permit the Medical Board, dominated by M.D.'s, to examine and control their chief competitors.

The progress of chiropractic, little short of marvelous, has been made under extremely unfavorable conditions. Denied ordinary freedom from oppression by political medicine, having no hospital facilities, no endowments of their schools or other institutions, no support of society except the commercial side resulting from the good they have done, they have reached the point where within the last seven years twenty-two states have enacted laws similar to the one now proposed in California.

The Medical Board, empowered, as it now is, to exercise unlimited authority over the practice of chiropractic, is using the medical law to throttle chiropractic and prohibit its practice in California.

The medical law, as administered by the Medical Board, has no reasonable tendency to promote the public safety and welfare.

The people of California demand that anyone who proposes to serve them in matters of health shall possess proper qualifications; therefore the demand for a board of chiropractic examiners to examine chiropractors and intelligently consider their qualifications. In this way only may the will and best interests of the people of California be served.

The following facts should be remembered:

The only opposition to this bill is by political doctors.

No chiropractic examinations were ever held in California.

No chiropractic licenses were ever issued in California.

No chiropractic licenses CAN be issued under present law.

In view of the foregoing, and in the interests of right and justice, vote "Yes."

G. A. LYNCH.

ARGUMENT AGAINST PROPOSED NEW CHIROPRACTIC BOARD.

To create two new boards, not only to duplicate but to triplicate the work now being done effectively and economically by one responsible board of examiners, is the extravagant purpose of Number 16, the Chiropractic Initiative, and Number 20, the Osteopathic Initiative. Both measures should be defeated as unnecessary and unsafe legislation.

California already has a competent Board of Examiners created by law, charged with the duty of determining, by impartial examination, the qualifications of all applicants, including chiropractors, who desire to treat diseases, injuries, deformities, physical or mental afflictions of human beings. Examinations are necessary to safeguard the lives and health of the people from incompetents, impostors and quacks. Citizens have the right to expect that anyone the state licenses shall possess a certain amount of knowledge of the causes and courses of diseases and the complex functions of the intricate human machine.

Examinations are open to all qualified applicants. Many chiropractors have taken and passed the examination and are now legally licensed and practicing in California. Any applicant who can meet the reasonable requirements of the present state law and pass a 75% examination can receive a license.

To create a new board for the special benefit of those who are unable or unwilling to take the state examination is to approve ignorance and license lawlessness.

Chiropractors and osteopaths constitute only two of the twenty-seven drugless cults of California. If a new board is created for chiropractors and another new board for osteopaths, it is obvious that the other twenty-five drugless cults are equally entitled to special boards. This would result in a chaotic condition constantly menacing the public health.

The California legislature at five different sessions carefully investigated and considered chiropractic demands for a new board based upon charges that the present board of medical examiners is incompetent and unfair. Each time the chiropractic charges were found untrue and the chiropractic bill was consequently rejected five times as without merit.

Some of the many dangerous features of the chiropractic act are: It lowers educational standards; it removes vital public health safeguards; under its provisions thousands of graduates of "fly by night" schools may be licensed with practically no examination at all; it neglects to define "chiropractic." To create a new board and grant powers to it, to license those of inferior education to practice an undefined and uncertain thing is unsafe.

The law governing the Board of Medical Examiners has been upheld by our courts as valid, reasonable and enforceable without one dissenting opinion. Governor Johnson and Governor Stephens selected an able board. If the present board becomes incompetent or unfair the governor has authority to select a new board. The courts can review and reverse the Board's decisions. Such a well-selected, responsible board assures all applicants of impartial and competent consideration and assures the people of California adequate protection.

To maintain educational standards and public health safeguards, vote "No" on Number 16.

HOMER R. SPENCER,
Assemblyman Thirty-fifth Assembly District.

17 **USE OF STREAMS.** Assembly Constitutional Amendment 41 adding Section 19a to Article XI of Constitution. Authorizes the state, or any political subdivision empowered to establish public works for such purpose, to provide itself or its inhabitants, in the manner therein provided, with water, electricity, or protection against flood by utilizing or controlling the waters of any stream outside this state or partly within this state, and to incur bonded indebtedness therefor as provided by law; these powers not limited by Section 31 of Article IV or Section 13 of Article XI of Constitution.

YES

NO

Assembly Constitutional Amendment No. 41—A resolution to propose to the people of the State of California an amendment to the constitution by adding a new section to article eleven thereof to be designated section nineteen a, authorizing the state, or municipal corporations or political subdivisions thereof, to provide water, electric energy, or protection from flood, by utilizing, or controlling, the waters of any stream situate outside this state, or partly within and partly without this state.

Resolved by the assembly, the senate concurring, That the legislature of the State of California, at its forty-fourth regular session, beginning on the third day of January, one thousand nine hundred twenty-one, two-thirds of all the members elected to each of the houses voting in favor thereof, proposes to the people of the state that a new section be added to article eleven of the constitution, to be numbered section nineteen a, and to read as follows:

[Note. The resolution as filed with the secretary of state shows the new section to be numbered 19a in the preamble and 20 at the beginning of the amendment as shown here.]

PROPOSED AMENDMENT.

Sec. 20. The State of California, or any district, municipal corporation or political subdivision of said state, authorized by law to establish public works for the purpose of supplying itself, or its inhabitants, with water, electric energy or means of protection from flood, may, for any such purpose, provide for utilizing or controlling the waters of any stream situated outside of this state, or partly within and partly without this state, and, to that end, may do and perform

each, any or all of the following acts and things, to wit:

(a) Acquire, establish, construct, own, maintain and operate, either alone or in common with any other political organization or organizations, any works, plants or structures, whether within this state or outside thereof, or partly within and partly without this state, necessary or convenient for any such purpose;

(b) Make and enter into contracts with any political organization, or organizations, with reference to the acquisition, establishment, construction, ownership, maintenance or operation of such works, plants or structures, including contracts for participating in the cost and benefits of the acquisition, establishment, construction, maintenance or operation of such works, plants or structures; provided, or to be provided, by any other political organization, or organizations, and contracts for the participation by any other political organization, or organizations, in the cost and benefits of such works, plants, or structures, provided, or to be provided, by the State of California, or any district, municipal corporation, or corporations, or political subdivision, or subdivisions, of said state, and contracts with any person, or persons, firm, or firms, corporation, or corporations, for participation by them, or any of them, in the cost, and, subject to the limitations hereinafter expressed, in the benefits, of any such works, plants, or structures, or for the furnishing to them, or any of them, of water or electric energy, but no person, firm or corporation, other than a political organization, shall ever own or operate, or hold any interest in, any such works, plants or structures;

(c) Become a member, associate or shareholder in any organization, association or corporation now or hereafter provided for under the laws of the United States, or of any state or states, and which shall be formed solely for the

Bill Number: SB 963
Introduced: February 23, 2008
Last Amended: July 1, 2008

Author: Ridley-Thomas
Vote: Majority

Bill Summary:

This bill would require the Board of Chiropractic Examiners (BCE) to disclose all ex parte communications at the BCE's public meetings and the ex parte communications must be recorded in the BCE's minutes. This BCE may also adopt regulations that provide an incentive for the licensee to provide services on a pro bono basis and to establish requirements for the number of staff required to adequately investigate and bring disciplinary against a license.

Purpose of the Bill:

According to the Author, this bill is intended to provide a more effective method of continuing state licensing and regulation when the Legislature sunsets a licensing board within the department of Consumer Affairs.

Existing Law:

Provides specified procedures, in which the Joint Committee on Boards, Commissions, and Consumer Protection recommends whether boards within the Department of Consumer Affairs should be continued or its functions modified. It also allows each board to appoint a person exempt from Civil Service to be designated as the executive officer.

Specifically, this bill would:

- Require the BCE to disclose all ex parte communications at meetings, and record in the BCE's minutes.
- Authorizes the BCE to adopt regulations to provide incentives to licensees that provide services, within their scope, on a pro bono basis prior to June 30, 2009. The regulation may reduce the license renewal fee for a licensee who complies with the pro bono requirements.
- Authorizes the BCE to adopt regulations that set requirements for the number of staff required to adequately investigate and, if appropriate, bring a disciplinary action against a licensee by June 30, 2009.

Fiscal Impact:

The BCE may experience an increase in workload; however, the BCE staff believes this can absorbed with existing staff.

BILL NUMBER: SB 963 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 1, 2008
AMENDED IN ASSEMBLY JUNE 25, 2007
AMENDED IN SENATE APRIL 16, 2007

INTRODUCED BY Senator Ridley-Thomas

FEBRUARY 23, 2007

~~An act to amend Sections 22, 102.3, 107, 108, 312, 313.1, 321, 1601.1, 1632.5, 1634.2, 1638.2, 1638.7, 1742, 1751, 2001, 2460, 2531, 2570.19, 2602, 2701, 2841, 2920, 3010.5, 3502.1, 3504, 3685, 3710, 4001, 4003, 4200.1, 4200.3, 4501, 4800, 4928, 4990, 5000, 5510, 5621, 5810, 5811, 6510, 6511, 6710, 7000.5, 7200, 7303, 7810, 8000, 8520, 8710, 9882, 18602, 18602.5, 18824, and 18882 of, to add Sections 27.5, 36, 37, 38, 101.5, 117, 117.5, 127.5, 156.7, and 450.1 to, to add Chapter 4.5 (commencing with Section 360) to Division 1 of, to add Division 1.3 (commencing with Section 474.20) to, to repeal Sections 2569, 4989, 4990.24, 7304, and 22259 of, to repeal Division 1.2 (commencing with Section 473) of, and to repeal and add Section 101.1 of, the Business and Professions Code, and to amend Sections 9148.8 and 9148.51 of, and to repeal Section 9148.52 of, the Government Code, relating to regulatory entities, and making an appropriation therefor. An act to amend Sections 22, 107, 108, 473.1, 473.2, 473.3, 473.4; and 473.5 of, to add Sections 27.5, 36, 37, 38, 127.5, 473.12, and 473.7 to, and to repeal and add Section 101.1 of, the Business and Professions Code, relating to regulatory boards.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 963, as amended, Ridley-Thomas. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs ~~and makes their funds separate accounts within the Professions and Vocations Fund. Under existing law, the revenue in certain of these accounts is continuously appropriated to the board, other than fine and penalty revenues~~, with board members serving specified terms of office. Existing law authorizes each board to appoint a person, exempt from Civil Service, who shall be designated as an executive officer.

Existing law generally makes the regulatory boards inoperative and repealed on ~~a~~ specified date ~~dates~~, unless ~~that date is~~

those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified.

~~This bill would delete those provisions making the boards inoperative on a specified date and subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make each of these boards subject to review by~~

~~a standing policy committee of the Legislature upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, which the bill would create in the Department of Consumer Affairs. The bill would, upon the committee's determination that a board is deficient, as specified, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board, as specified. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings by a board within the department if required to promote or protect the interests of consumers, as defined, and would require the office to perform other specified duties. The bill would require the office to charge each board a fee to support the office's functions and would thereby make an appropriation by expanding the expenditure purposes of a continuously appropriated fund. The bill would create the Consumer Advocate Fund where these fees would be deposited and would be available to the office upon appropriation by the Legislature. The bill would require the director to report annually to the Governor and the Legislature, as specified, on the office's operations.~~

~~The bill would require boards within the department to enter into an agreement with the department for the performance of administrative and ministerial functions and would require the Director of Consumer Affairs, prior to January 1, 2010, to replace the existing technology system serving the department and its component boards and to charge each board its pro rata share of the cost to replace the system.~~

This bill would, notwithstanding any other provision of law, terminate the term of office of each board member of certain boards within the department on specified and unspecified dates. The bill would subject boards that are scheduled to have their board membership so reconstituted to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would also require the appropriate standing policy committee of the Legislature to investigate board deficiencies and to hold specified public hearings.

The bill would also require each board within the department to ~~adopt performance measures, as specified, and report quarterly to the director and the chief of the Office of Consumer Advocate relating to those measures. The bill would also require boards to post the information on their Internet Web site and to report the information to the Legislative Analyst's Office, the Legislature, and the Department of Finance. The bill would require the Office of the Consumer Advocate to report to the Legislature if a board failed to meet its performance measures. The bill would also require those boards to post annually on their~~
its Internet Web sites

Site the number of reports in specified categories that it received that year for its licensees.

The bill would allow a person to serve as the ~~public~~ member of more than one of these boards and would require all members of these boards, as well as bureau chiefs, to report annually to their appointing authority on their goals and objectives and success in achieving them, which would be posted on the board's Internet Web site ~~executive officer or registrar of more than one board and would make all appointments of an executive officer or registrar subject to approval by the Director of Consumer Affairs and confirmation by the Senate. The bill would require the department to report to the Legislature and Governor if a board~~

was unable to meet because of a lack of a quorum or vacancy. The bill would require members of these boards and other state boards to report ex parte communications, as defined, in the board's minutes and would require the department to develop a common method of making boards' minutes available to the public. The bill would ~~require~~ authorize boards within the department, the State Bar, the Office of Real Estate Appraisers, and other state boards that license professions or businesses to adopt regulations to provide incentives to licensees to provide services on a pro bono basis and to adopt regulations prior to June 30, 2009, establishing regulatory board staffing requirements.

Vote: majority. Appropriation: ~~yes~~ no

Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22 of the Business and Professions Code is amended to read:

22. "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

SEC. 2. Section 27.5 is added to the Business and Professions Code, to read:

27.5. A board within the department shall annually post on its Internet Web site the number of reports it received that year for its licensees in each of the following categories:

(a) Criminal convictions.

(b) Judgments, settlements, or arbitration awards.

(c) Claims paid by a professional liability insurer caused by the licensee's negligence, error, or omission.

SEC. 3. Section 36 is added to the Business and Professions Code, to read:

~~36.~~ A board within the department, the State Bar, the Office of Real Estate Appraisers, and any other state board that issues a license, certificate, or registration authorizing a person to engage in a business or profession may adopt regulations that provide an incentive to the holder to provide services within the scope of his or her license, certificate, or registration on a pro bono basis. The regulations may reduce the amount of the renewal fee for a licensee, certificate holder, or registrant who demonstrates compliance with the pro bono requirements set forth in the regulations.

SEC. 4. Section 37 is added to the Business and Professions Code, to read:

37. A board within the department and any other state board that issues a license, certificate, or registration authorizing a person to engage in a business or profession ~~shall~~ may adopt regulations prior to June 30, 2009, that establish requirements for the number of staff required to adequately investigate and, if appropriate, bring a disciplinary action against a licensee, certificate holder, or registrant regulated by the board. The staff level requirements shall, at a minimum, be the number of staff required per 1,000 persons regulated by the board and include the appropriate number of staff to complete all investigatory and disciplinary functions.

SEC. 5. Section 38 is added to the Business and Professions Code, to read:

38. A member of a board within the department and a member of a

state board, as defined in Section 9148.2 of the Government Code, shall disclose all of his or her ex parte communications at the board's next public meeting, and the ex parte communications shall be recorded in the board's minutes. "Ex parte communication" means any oral or written communication concerning matters, other than purely procedural matters, under the board's jurisdiction that are subject to a vote by the board that occurred between the member and a person, other than another board member or an employee of the board or the department of which the board is a part, who intends to influence the decision of the member.

SEC. 6. Section 101.1 of the Business and Professions Code is repealed.

SEC. 7. Section 101.1 is added to the Business and Professions Code, to read:

~~101.1. (a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to ongoing and continuous review as well as a periodic thorough review when issues arise requiring that level of review and such a review is requested by a Member of the Legislature or the chief of the Office of the Consumer Advocate as provided in Division 1.3 (commencing with Section 474.20). The review of a board shall evaluate and determine whether its operations are effectively protecting the public and that protection of the public is the highest priority of the board.~~

~~(b) Notwithstanding any other provision of law, if a board is deemed deficient and its members removed, as described in Section 474.21~~

101.1. Notwithstanding any other provision of law, if the terms of office of the members of a board are terminated in accordance with the act that added this section or by subsequent acts, a successor board shall be appointed that shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the board that it is succeeding. The successor board shall have the same number of members and composition as the board that it is succeeding, and those members shall be appointed by the same appointing authorities, for the same term, and with the same membership requirements as the members of the board it is succeeding. ~~The successor board shall have the same authority to appoint an executive officer as the board that it is succeeding as of the date that board was found deficient. The successor board members shall be appointed within 10 business days of receipt by the Joint Committee on Rules of the deficiency report, as described in Section 474.21.~~

SEC. 8. Section 101.5 is added to the Business and Professions Code, to read:

~~101.5. (a) Each board within the department shall enter into an agreement with the department for the department to provide administrative and ministerial functions and services, including, but not limited to, personnel services, information technology, the administration of call centers, and the administration of examinations. The Legislature intends that these agreements shall achieve cost savings resulting from economies of scale and a more consistent delivery of services to California consumers and licensees.~~

~~(b) A board shall not enter into an agreement described in subdivision (a) if it would reduce the board's ability to comply with its duties prescribed by law.~~

SEC. 9. Section 102.3 of the Business and Professions Code is amended to read:

~~102.3. (a) The director may enter into an interagency agreement with an appropriate entity within the Department of Consumer Affairs as provided for in Section 101 to delegate the duties, powers, purposes, responsibilities, and jurisdiction that have been succeeded and vested with the department, of a board that became inoperative and was repealed in accordance with Chapter 908 of the Statutes of 1994.~~

~~(b) (1) If, pursuant to subdivision (a), an interagency agreement is entered into between the director and that entity, the entity receiving the delegation of authority may establish a technical committee to regulate, as directed by the entity, the profession subject to the authority that has been delegated. The entity may delegate to the technical committee only those powers that it received pursuant to the interagency agreement with the director. The technical committee shall have only those powers that have been delegated to it by the entity.~~

~~(2) If the entity delegates its authority to adopt, amend, or repeal regulations to the technical committee, all regulations adopted, amended, or repealed by the technical committee shall be subject to the review and approval of the entity.~~

~~(3) The entity shall not delegate to a technical committee its authority to discipline a licensee who has violated the provisions of the applicable chapter of the Business and Professions Code that is subject to the director's delegation of authority to the entity.~~

~~(c) An interagency agreement entered into, pursuant to subdivision (a), shall continue until the licensing program administered by the technical committee has undergone a review by the Office of the Consumer Advocate to evaluate and determine whether the highest priority of the licensing program is the protection of the public. Thereafter, at the discretion of the chief of that office, the interagency agreement may be renewed.~~

~~SEC. 10.~~ SEC. 8. Section 107 of the Business and Professions Code is amended to read:

107. (a) Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Personnel Administration pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar. A person may be appointed as an executive officer or registrar for more than one board if approved by each of those boards and may serve in those capacities at the same time if practical and consistent with law and the respective board functions and duties.

(b) Notwithstanding any other provision of law, all appointments of an executive officer or registrar shall be subject to the approval of the director and confirmation by the Senate.

~~SEC. 11.~~ SEC. 9. Section 108 of the Business and Professions Code is amended to read:

108. (a) Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.

(b) The department shall develop a common method of maintaining, posting, and making available to the public minutes of the meetings of the boards comprising the department. Each of those boards shall

use that method and shall post the minutes of its meetings on its Internet Web site within 10 days of the date of the meeting.

~~SEC. 12. Section 117 is added to the Business and Professions Code, to read:~~

~~117. (a) Each board within the department shall adopt meaningful, measurable, and manageable performance measures. Performance measures include, but are not limited to, the following information:~~

~~(1) A comprehensive statement of the board's mission, goals, objectives, and legal jurisdiction in protecting the health, safety, and welfare of the public.~~

~~(2) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average and median costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.~~

~~(3) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.~~

~~(4) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.~~

~~(5) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.~~

~~(b) Each board within the department shall report to the director and the chief of the Office of the Consumer Advocate its performance measures and data relating to those measures on a quarterly basis. Each board shall post quarterly on its Internet Web site the information it reported pursuant to this subdivision and provide the information annually to the Department of Finance, the Legislative Analyst's Office, and the Legislature.~~

~~(c) The chief of the Office of the Consumer Advocate, in consultation with the Legislative Analyst's Office, shall annually review the information reported by boards pursuant to subdivision (b) and report to the Legislature if it determines that a board has failed to meet its performance measures.~~

~~(d) The department may adopt regulations pertaining to the requirements described in subdivision (a).~~

~~SEC. 13. Section 117.5 is added to the Business and Professions Code, to read:~~

~~117.5. (a) Each member of a board within the department and the chief of any bureau within the board shall annually report, on or before December 31 of each year, to the authority that appointed him or her the extent to which the member or chief achieved his or her goals and objectives that year and shall also report the goals and objectives he or she expects to achieve during the following calendar year.~~

~~(b) The board or bureau shall post the reports described in subdivision (a) submitted by its members chief on its Internet Web site within 30 days of their submission date.~~

~~SEC. 14. SEC. 10. Section 127.5 is added to the Business and Professions Code, to read:~~

~~127.5. The department shall report to the Legislature and the Governor when a board within the department has been unable to schedule or convene a meeting of the board because of a lack of a quorum caused by the absence of its members or by a vacancy in its membership.~~

~~SEC. 15. Section 156.7 is added to the Business~~

~~and Professions Code, to read:~~

~~156.7. (a) Prior to January 1, 2010, the director, in consultation with the State Chief Information Officer, shall replace the department's existing information technology system with a system that meets the requirements of the department and of the boards within the department.~~

~~(b) The director shall charge each of the boards on a pro rata share basis for the costs of replacing the information technology system. The charge shall be an administrative expense that may be levied in advance against the funds of any of the boards pursuant to Section 201.~~

~~(c) Notwithstanding any other provision of this section, the procurement of the information technology system shall be made in accordance with Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code.~~

SEC. 11. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to ~~become inoperative and to be repealed~~ have its membership reconstituted on a specified date as provided by ~~the specific act relating to the board~~
Section 473.12 .

(b) The Bureau for Postsecondary and Vocational Education. For purposes of this chapter, "board" includes the bureau.

(c) The Cemetery and Funeral Bureau.

SEC. 12. Section 473.12 is added to the Business and Professions Code, to read:

473.12. Notwithstanding any other provision of law, the term of office of each member of the following boards in the department shall terminate on the date listed:

- (a) The Dental Board of California: January 1, 2012.
- (b) The Medical Board of California: January 1, 2011.
- (c) The State Board of Optometry: January 1, 2011.
- (d) The California State Board of Pharmacy: January 1, 2011.
- (e) The Veterinary Medical Board: January 1, 2012.
- (f) The California Board of Accountancy: January 1, 2012.
- (g) The California Architects Board: January 1, 2012.
- (h) The State Board of Barbering and Cosmetology: January 1, 2012.

(i) The Board for Professional Engineers and Land Surveyors: January 1, 2012.

(j) The Contractors' State License Board: January 1, 2010.

(k) The Bureau for Private Postsecondary Education: ____.

(l) The Structural Pest Control Board: January 1, 2012.

(m) The Bureau of Home Furnishings and Thermal Insulation: ____.

(n) The Board of Registered Nursing: January 1, 2011.

(o) The Board of Behavioral Sciences: January 1, 2010.

(p) The State Athletic Commission: January 1, 2010.

(q) The Cemetery and Funeral Bureau: ____.

(r) The State Board of Guide Dogs for the Blind: January 1, 2012.

(s) The Bureau of Security and Investigative Services: ____.

(t) The Court Reporters Board of California: January 1, 2010.

(u) The Board of Vocational Nursing and Psychiatric Technicians: January 1, 2012.

(v) The Landscape Architects Technical Committee: January 1, 2012.

(w) The Bureau of Electronic and Appliance Repair: ____.

(x) The Division of Investigation, Department of Consumer Affairs: ____.

- (y) The Bureau of Automotive Repair: ____.
- (z) The Board for Geologists and Geophysicists: January 1, 2010.
- (aa) The Respiratory Care Board of California: January 1, 2011.
- (ab) The Acupuncture Board: January 1, 2010.
- (ac) The Board of Psychology: January 1, 2010.
- (ad) The California Board of Podiatric Medicine: January 1, 2011.
- (ae) The Physical Therapy Board of California: January 1, 2014.
- (af) The Arbitration Review Program: ____.
- (ag) The Dental Hygiene Committee of California: ____.
- (ah) The Hearing Aid Dispensers Bureau: ____.
- (ai) The Physician Assistant Committee, Medical Board of California: January 1, 2012.
- (aj) The Speech-Language Pathology and Audiology Board: January 1, 2012.
- (ak) The California Board of Occupational Therapy: January 1, 2014.
- (al) The Osteopathic Medical Board of California: ____.
- (am) The Bureau of Naturopathic Medicine: ____.

SEC. 13. Section 473.2 of the Business and Professions Code is amended to read:

473.2. All boards to which this chapter applies shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the Joint Committee on Boards, Commissions, and Consumer Protection no later than 22 months before that ~~board shall become inoperative~~ board's membership shall be reconstituted pursuant to Section 473.12. The analysis and report shall include, at a minimum, all of the following:

- (a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
- (b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.
- (c) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.
- (d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.
- (e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

SEC. 14. Section 473.3 of the Business and Professions Code is amended to read:

473.3. (a) Prior to the ~~termination, continuation, or reestablishment of any board or any of the board's functions~~ reconstitution of the membership of any board described in Section 473.12, the Joint Committee on Boards, Commissions, and Consumer Protection shall, during the interim recess preceding the date upon which a ~~board becomes inoperative~~ board's membership is to be reconstituted, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the ~~board or~~ regulatory program, and that its licensing

function is the least restrictive regulation consistent with the public health, safety, and welfare.

(b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

(d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The committee shall evaluate and review the effectiveness and efficiency of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

SEC. 15. Section 473.4 of the Business and Professions Code is amended to read:

473.4. (a) The Joint Committee on Boards, Commissions, and Consumer Protection shall evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the ~~board or~~ regulatory program and for the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary,

resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

(c) Nothing in this section precludes any board from submitting other appropriate information to the Joint Committee on Boards, Commissions, and Consumer Protection.

SEC. 16. Section 473.5 of the Business and Professions Code is amended to read:

473.5. The Joint Committee on Boards, Commissions, and Consumer Protection shall report its findings and preliminary recommendations to the department for its review, and, within 90 days of receiving the report, the department shall report its findings and recommendations to the Joint Committee on Boards, Commissions, and Consumer Protection during the next year of the regular session that follows the hearings described

in Section 473.3. The committee shall then meet to vote on final recommendations. A final report shall be completed by the committee and made available to the public and the Legislature. The report shall include final recommendations of the department and the committee and whether ~~each board or function scheduled for repeal shall be terminated, continued, or reestablished,~~

the board's membership should be reconstituted and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.

SEC. 17. Section 473.7 is added to the Business and Professions Code, to read:

473.7. The appropriate standing policy committee of the Legislature shall, through its oversight function, investigate the perceived deficiencies in the operation of a board to which this chapter applies and hold public hearings on any matter subject to public hearing under Section 473.3.

~~SEC. 16. Section 312 of the Business and Professions Code is amended to read:~~

~~312. (a) The director shall submit to the Governor and the Legislature on or before January 1, 2003, and annually thereafter, a report of programmatic and statistical information regarding the~~

~~activities of the department and its constituent entities. The report shall include information concerning the director's activities pursuant to Section 326, including the number and general patterns of consumer complaints and the action taken on those complaints.~~

~~(b) On or before January 1 of each year, beginning in 2009, the director shall submit to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:~~

~~(1) The number of personnel years assigned to the Office of the Consumer Advocate.~~

~~(2) The total dollars expended by the Office of the Consumer Advocate in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.~~

~~(3) Workload standards and measures for the Office of the Consumer Advocate.~~

~~SEC. 17. Section 313.1 of the Business and Professions Code is amended to read:~~

~~313.1 (a) Notwithstanding any other provision of law to the contrary, no rule or regulation, except those relating to examinations and qualifications for licensure, and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.~~

~~(b) The director and the chief of the Office of the Consumer Advocate shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following:~~

~~(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.~~

~~(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.~~

~~(3) Final rulemaking records.~~

~~(c) The submission of all notices and final rulemaking records to the director and the chief of the Office of the Consumer Advocate and the completion of their review, as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the completion of the director's review and only then if the director and the chief of the Office of the Consumer Advocate have not disapproved it. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.~~

~~(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director and the chief of the Consumer Advocate shall have the authority for a period of 30 days to disapprove a proposed rule or regulation on the ground that it is injurious to the public health, safety, or welfare.~~

~~(e) Final rulemaking records shall be filed with the director and the chief of the Office of the Consumer Advocate within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-year notice period may be extended, as specified by this subdivision.~~

~~(1) If the one-year notice period lapses during the 30-day review period, or within 60 days following the notice of disapproval, it may~~

~~be extended for a maximum of 90 days.~~

~~(2) If the director and the chief approve the final rulemaking record or declines to take action on it within 30 days, the board, commission, or committee shall have five days from the receipt of the record from the director and the chief within which to file it with the Office of Administrative Law.~~

~~(3) If the director or the chief disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(f) Nothing in this section shall be construed to prohibit the director or the chief of the Office of the Consumer Advocate from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 18. Section 321 of the Business and Professions Code is amended to read:~~

~~321. Whenever it appears to the director or the chief of the Office of Consumer Advocate that the interests of the consumers of this state are being damaged, or may be damaged, by any person who engaged in, or intends to engage in, any acts or practices in violation of any law of this state, or any federal law, the director or any officer or employee designated by the director, or the Attorney General, may commence legal proceedings in the appropriate forum to enjoin those acts or practices and may seek other appropriate relief on behalf of those consumers.~~

~~SEC. 19. Chapter 4.5 (commencing with Section 360) is added to Division 1 of the Business and Professions Code, to read:~~

~~CHAPTER 4.5. OFFICE OF THE CONSUMER ADVOCATE~~

~~Article 1. General Provisions~~

~~360. This chapter shall be known and may be cited as the Office of the Consumer Advocate Act.~~

~~361. It is the intent of the Legislature and the purpose of this chapter to promote the efficiency of each of the boards that comprise the department by ensuring that each board properly discharges its regulatory and disciplinary functions to protect the interests of consumers.~~

~~362. The following definitions apply for purposes of this chapter:~~

~~(a) "Board" means any entity listed in Section 101.~~

~~(b) "Chief" means the chief of the Office of the Consumer Advocate.~~

~~(c) "Interests of consumers" means the protection of the health, welfare, and safety of consumers by a board.~~

~~(d) "Office" means the Office of the Consumer Advocate.~~

~~Article 2. Administration~~

~~370. The Office of the Consumer Advocate is hereby established in the department.~~

~~371. The office is under the supervision and control of a chief. The chief shall be appointed by the Governor, subject to confirmation by the Senate pursuant to Section 1322 of the Government Code. The chief shall be appointed for a term of four years. Upon expiration of the chief's term, the chief shall continue to serve in the position until a new chief is appointed by the Governor. The director shall fix the amount of the chief's compensation in accordance with law. The Governor may remove the chief for any cause specified in Section 106.~~

~~372. The chief shall administer and enforce the provisions of this chapter. Every power granted or duty imposed upon the chief under this chapter may be exercised or performed in the name of the chief by an employee of the office, subject to any conditions and limitations the chief may prescribe.~~

~~373. (a) The chief, in accordance with the State Civil Service Act, shall appoint a chief counsel of the office and an adequate number of attorneys, as determined by the chief counsel, to carry out the provisions of this chapter.~~

~~(b) The chief, in accordance with the State Civil Service Act, may appoint and fix the compensation of clerical or other personnel as may be necessary to carry out the provisions of this chapter.~~

~~(c) All personnel appointed under this section shall perform their duties under the supervision and direction of the chief.~~

~~374. The chief may contract for the services of experts and consultants if necessary to carry out the provisions of this chapter and may provide compensation and reimbursement of expenses for those experts and consultants in accordance with state law.~~

~~Article 3. Powers and Duties~~

~~380. (a) The office shall serve as an independent monitor pursuant to Section 474.22.~~

~~(b) The office shall review interagency agreements pursuant to Section 102.3.~~

~~381. The chief may establish through regulations a Consumer Participation Program to allow the office to award reasonable advocacy and witness fees to any person or organization that has made a substantial contribution on behalf of the interests of consumers either through the adoption of a regulation by a board or through an order or decision issued by a board in a disciplinary proceeding.~~

~~382. The office may appear at a meeting of a board and shall be permitted to participate as an amicus curiae in disciplinary proceedings by the board whenever the chief determines that the appearance or participation is required to promote or protect the interests of consumers. The office shall conform with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) in discharging these duties.~~

~~383. The chief shall have the following powers and it shall be his or her duty to take the following actions:~~

~~(a) Recommend and propose the enactment of legislation that is necessary to protect and promote the interests of consumers.~~

~~(b) Represent the interests of consumers before federal and state legislative and regulatory hearings.~~

~~(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.~~

~~(d) Study, investigate, research, and analyze matters affecting the interests of consumers.~~

~~(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon state agencies for information.~~

~~(f) Propose and assist in the creation and development of consumer education programs.~~

~~(g) Promote ethical standards of conduct for business, professions, and consumers related to the interest of consumers.~~

~~(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.~~

~~(i) Exercise and perform other functions, powers, and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.~~

~~(j) Maintain contact and liaison with consumer groups in California and nationally.~~

~~384. The chief shall report annually to the Governor and appear annually before the appropriate policy committees of the Legislature to report on the office's activities.~~

~~Article 4. Revenue~~

~~390. The office shall annually charge each board on a pro rata share basis an amount that is sufficient, as determined by the chief, to carry out the provisions of this chapter. The total amount of charges made pursuant to this section shall not exceed _____ million dollars (\$_____) annually.~~

~~391. All moneys collected pursuant to this article shall be deposited into the Consumer Advocate Fund, which is hereby created in the State Treasury. The revenue in this fund shall be expended solely for purposes of this chapter upon appropriation by the Legislature in the annual Budget Act.~~

~~SEC. 20. Section 450.1 is added to the Business and Professions Code, to read:~~

~~450.1. A person may serve as a public member of more than one board at the same time if not prohibited by any other law.~~

~~SEC. 21. Division 1.2 (commencing with Section 473) of the Business and Professions Code is repealed.~~

~~SEC. 22. Division 1.3 (commencing with Section 474.20) is added to the Business and Professions Code, to read:~~

~~DIVISION 1.3. LEGISLATIVE REVIEW OF STATE BOARDS AND BOARDS WITHIN THE DEPARTMENT OF CONSUMER AFFAIRS~~

~~474.20. (a) A Member of the Legislature or the chief of the Office of the Consumer Advocate may submit a written request to the appropriate standing policy committee of the Legislature to conduct an analysis to evaluate any of the following entities:~~

~~(1) A board, as defined in Section 22.~~

~~(2) A state board, as defined in Section 9148.2 of the Government Code.~~

~~(b) The request made pursuant to subdivision (a) shall describe any perceived deficiencies in the operation of the board and the~~

~~detailed reasons an analysis of its operation is requested that may include, but not be limited to, the issues subject to investigation under subdivision (c) of Section 474.21.~~

~~474.21. (a) (1) The appropriate standing policy committee of the Legislature shall, through its oversight function, investigate the perceived deficiencies described in the request submitted pursuant to Section 474.20 and hold public hearings on the matter. The committee may request the Office of the Consumer Advocate to assist in the investigation. The committee shall complete these functions within a 60-day period during the regular legislative session, with the period commencing on the date of the committee's receipt of the request.~~

~~(2) Notwithstanding paragraph (1), if, in the two-year period prior to the committee's receipt of the request, public hearings relating to the same board named in the request were held by a standing policy committee of the Legislature that determined no deficiencies exist, the committee may refuse to conduct additional hearings and investigation of the board.~~

~~(b) The committee may find, on the basis of the information it obtained during its investigation, whether a question exists as to the highest priority of the operations of the board being the protection of the public when exercising its licensing, regulatory, and disciplinary functions, and whether the board is effectively protecting the public.~~

~~(c) In determining whether a question exists under subdivision (b), the committee shall review the information and allegations made in the request submitted pursuant to Section 474.20 and any related information and allegations. The committee may review issues such as the following:~~

~~(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.~~

~~(2) Whether the initial reasons for licensing or regulating a practice or profession have changed.~~

~~(3) Whether other conditions have occurred that would warrant increased, decreased, or the same amount of regulation by the board.~~

~~(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board's rules promote the public interest and are within the scope of legislative intent.~~

~~(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resources, and personnel matters.~~

~~(6) Whether an analysis of the board's operations indicates that the entity performs its statutory duties efficiently and effectively.~~

~~(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the profession or vocation and the individuals it regulates.~~

~~(8) Whether the board and its laws or regulations stimulate or restrict competition and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.~~

~~(9) Whether complaint investigation, intervention, and disciplinary procedures adequately protect the public and whether the final disposition of complaints, investigations, restraining orders, and disciplinary actions are in the public interest or those~~

~~procedures are, instead, self-serving to the profession, vocation, or individuals being regulated by the board.~~

~~(10) Whether the scope of practice of the regulated profession or vocation contributes to the highest utilization of personnel and whether the entry requirements for the profession or vocation encourage affirmative action.~~

~~(11) Whether administrative and statutory changes are necessary to improve the board's operations to promote the public interest.~~

~~(d) The standing policy committee shall determine if a board is deficient. The committee shall report its deficiency determination to the Joint Committee on Rules. Notwithstanding any other provision of law, if a board is found deficient, each incumbent member of the board shall be removed from office without a hearing within 10 business days of receipt of the committee's deficiency report by the Joint Committee on Rules, and successor board members shall be appointed within that timeframe pursuant to Section 101.1.~~

~~474.22. (a) Within 10 business days of the date the Joint Committee on Rules receives the deficiency report described in Section 474.21, the Office of the Consumer Advocate shall assume the duties of an independent monitor for the board.~~

~~(b) Within one year of the date it assumes the duties of an independent monitor, the Office of the Consumer Advocate shall report its findings to the Governor, and the Legislature may make recommendations for required reforms of the board.~~

~~SEC. 23. Section 1601.1 of the Business and Professions Code is amended to read:~~

~~1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.~~

~~(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.~~

~~(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.~~

~~SEC. 24. Section 1632.5 of the Business and Professions Code is amended to read:~~

~~1632.5. (a) Prior to implementation of paragraph (2) of subdivision (c) of Section 1632, the department's Office of Examination Resources shall review the Western Regional Examining Board examination to assure compliance with the requirements of Section 139 and to certify that the examination process meets those standards. If the department determines that the examination process fails to meet those standards, paragraph (2) of subdivision (c) of Section 1632 shall not be implemented. The review of the Western Regional Examining Board examination shall be conducted during or after the Dental Board of California's occupational analysis scheduled for the 2004-05 fiscal year, but not later than September 30, 2005. However, an applicant who successfully completes the~~

~~Western Regional Examining Board examination on or after January 1, 2005, shall be deemed to have met the requirements of subdivision (c) of Section 1632 if the department certifies that the Western Regional Examining Board examination meets the standards set forth in this subdivision.~~

~~(b) The Western Regional Examining Board examination process shall be regularly reviewed by the department pursuant to Section 139.~~

~~(c) The Western Regional Examining Board examination shall meet the mandates of subdivision (a) of Section 12944 of the Government Code.~~

~~(d) The Dental Board of California shall report on or before July 1, 2008, to the department and the Office of the Consumer Advocate on the pass rates of applicants who sat for the Western Regional Examining Board examination, compared with the pass rates of applicants who sat for the state clinical and written examination administered by the Dental Board of California. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.~~

~~SEC. 25. Section 1634.2 of the Business and Professions Code is amended to read:~~

~~1634.2. (a) An advanced education program's compliance with subdivision (c) of Section 1634.1 shall be regularly reviewed by the department pursuant to Section 139.~~

~~(b) An advanced education program described in subdivision (c) of Section 1634.1 shall meet the requirements of subdivision (a) of Section 12944 of the Government Code.~~

~~(c) The clinical residency program completion certification required by subdivision (c) of Section 1634.1 shall include a list of core competencies commensurate to those found in the board's examinations. The board, together with the department's Office of Examination Resources, shall ensure the alignment of the competencies stated in the clinical residency program completion certification with the board's current occupational analysis. The board shall implement use of the clinical residency program completion certification form and use of the core competency list through the adoption of emergency regulations by January 1, 2008.~~

~~(d) The board shall report to the department and the Office of the Consumer Advocate on or before January 1, 2010, the number of complaints received for those dentists who have obtained licensure by passing the state clinical examination and for those dentists who have obtained licensure through an advanced education program. The report shall also contain tracking information on these complaints and their disposition. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.~~

~~SEC. 26. Section 1638.1 of the Business and Professions Code is amended to read:~~

~~1638.1. (a) (1) A person licensed pursuant to Section 1634 who wishes to perform elective facial cosmetic surgery shall first apply for and receive a permit to perform elective facial cosmetic surgery from the board.~~

~~(2) A permit issued pursuant to this section shall be valid for a period of two years and must be renewed by the permit holder at the time his or her license is renewed. Every six years, prior to renewal of the permit holder's license and permit, the permit holder shall submit evidence acceptable to the credentialing committee that he or she has maintained continued competence to perform the procedures authorized by the permit. The credentialing committee may limit a~~

~~permit consistent with paragraph (1) of subdivision (c) if it is not satisfied that the permitholder has established continued competence.~~

~~(b) The board may adopt regulations for the issuance of the permit that it deems necessary to protect the health, safety, and welfare of the public.~~

~~(c) A licensee may obtain a permit to perform elective facial cosmetic surgery by furnishing all of the following information on an application form approved by the board:~~

~~(1) Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.~~

~~(2) Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B):~~

~~(A) (i) Is certified, or is a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.~~

~~(ii) Submits to the board a letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association, stating that the licensee has the education, training, and competence necessary to perform the surgical procedures that the licensee has notified the board he or she intends to perform.~~

~~(iii) Submits documentation to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform from both of the following categories:~~

~~(I) Cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty.~~

~~(II) Cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation.~~

~~(iv) Submits documentation to the board showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.~~

~~(B) (i) Has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures set forth in paragraph (A) at that hospital.~~

~~(ii) Submits to the board the documentation described in clause (iii) of subparagraph (A).~~

~~(3) Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.~~

~~(d) The application shall be accompanied by an application fee of five hundred dollars (\$500) for an initial permit. The fee to renew a permit shall be two hundred dollars (\$200).~~

~~(e) (1) The board shall appoint a credentialing committee to review the qualifications of each applicant for a permit. Upon completion of the review of an applicant, the committee shall make a recommendation to the board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permitholder to perform any facial cosmetic surgical procedure authorized by this section, or it may contain limitations if the credentialing committee is not satisfied that the applicant has the training or competence to perform certain classes of procedures, or if the applicant has not requested to be permitted for all procedures authorized by this section.~~

~~(2) The credentialing committee shall be comprised of five~~

~~members, as follows:~~

~~(A) A physician and surgeon with a specialty in plastic and reconstructive surgery who maintains active status on the staff of a licensed general acute care hospital in this state.~~

~~(B) A physician and surgeon with a specialty in otolaryngology who maintains active status on the staff of a licensed general acute care hospital in this state.~~

~~(C) Three oral and maxillofacial surgeons licensed by the board who are board certified by the American Board of Oral and Maxillofacial Surgeons, and who maintain active status on the staff of a licensed general acute care hospital in this state, at least one of whom shall be licensed as a physician and surgeon in this state. Two years after the effective date of this section, any oral and maxillofacial surgeon appointed to the committee who is not licensed as a physician and surgeon shall hold a permit pursuant to this section.~~

~~(3) The board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:~~

~~(A) The Medical Board of California.~~

~~(B) The California Dental Association.~~

~~(C) The California Association of Oral and Maxillofacial Surgeons.~~

~~(D) The California Medical Association.~~

~~(E) The California Society of Plastic Surgeons.~~

~~(F) Any other source that the board deems appropriate.~~

~~(4) The credentialing committee shall meet at a time and place directed by the board to evaluate applicants for permits. A quorum of three members shall be required for the committee to consider applicants and make recommendations to the board.~~

~~(f) A licensee may not perform any elective, facial cosmetic surgical procedure except at a general acute care hospital, a licensed outpatient surgical facility, or an outpatient surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Association for Ambulatory Health Care (AAAH), the Medicare program, or an accreditation agency approved by the Medical Board of California pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.~~

~~(g) For purposes of this section, the following terms shall have the following meanings:~~

~~(1) "Elective cosmetic surgery" means any procedure defined as cosmetic surgery in subdivision (d) of Section 1367.63 of the Health and Safety Code, and excludes any procedure that constitutes reconstructive surgery, as defined in subdivision (c) of Section 1367.63 of the Health and Safety Code.~~

~~(2) "Facial" means those regions of the human body described in Section 1625 and in any regulations adopted pursuant to that section by the board.~~

~~(h) A holder of a permit issued pursuant to this section shall not perform elective facial cosmetic surgical procedures unless he or she has malpractice insurance or other financial security protection that would satisfy the requirements of Section 2216.2 and any regulations adopted thereunder.~~

~~(i) A holder of a permit shall comply with the requirements of subparagraph (D) of paragraph (2) of subdivision (a) of Section 1248.15 of the Health and Safety Code, and the reporting requirements specified in Section 2240, with respect to any surgical procedure authorized by this section, in the same manner as a physician and surgeon.~~

~~(j) Any violation of this section constitutes unprofessional conduct and is grounds for the revocation or suspension of the person's permit, license, or both, or the person may be reprimanded or placed on probation. Proceedings initiated by the board under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.~~

~~(k) On or before January 1, 2009, and every four years thereafter, the board shall report to the Legislature and the Office of the Consumer Advocate on all of the following:~~

~~(1) The number of persons licensed pursuant to Section 1634 who apply to receive a permit to perform elective facial cosmetic surgery from the board pursuant to subdivision (a).~~

~~(2) The recommendations of the credentialing committee to the board.~~

~~(3) The board's action on recommendations received by the credentialing committee.~~

~~(4) The number of persons receiving a permit from the board to perform elective facial cosmetic surgery.~~

~~(5) The number of complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.~~

~~(6) Action taken by the board resulting from complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.~~

~~SEC. 27. Section 1638.7 of the Business and Professions Code is amended to read:~~

~~1638.7. The next occupational analysis of dental licensees and oral and maxillofacial facial surgeons pursuant to Section 139 shall include a survey of the training and practices of oral and maxillofacial surgeons and, upon completion of that analysis, a report shall be made to the Legislature and the Office of the Consumer Advocate regarding the findings.~~

~~SEC. 28. Section 1742 of the Business and Professions Code is amended to read:~~

~~1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.~~

~~(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:~~

~~(1) The committee shall have the following duties and authority related to education programs and curriculum:~~

~~(A) Shall evaluate all dental auxiliary programs applying for board approval in accordance with board rules governing the programs.~~

~~(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.~~

~~(C) Shall report and make recommendations to the board as to whether a program or course qualifies for approval. The board retains the final authority to grant or deny approval to a program or course.~~

~~(D) Shall review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at the request of the board.~~

~~(E) May review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at its own initiation.~~

~~(2) The committee shall have the following duties and authority related to applications:~~

~~(A) Shall review and evaluate all applications for licensure in the various dental auxiliary categories to ascertain whether a candidate meets the appropriate licensing requirements specified by statute and board regulations.~~

~~(B) Shall maintain application records, cashier application fees, and perform any other ministerial tasks as are incidental to the application process.~~

~~(C) May delegate any or all of the functions in this paragraph to its staff.~~

~~(D) Shall issue auxiliary licenses in all cases, except where there is a question as to a licensing requirement. The board retains final authority to interpret any licensing requirement. If a question arises in the area of interpreting any licensing requirement, it shall be presented by the committee to the board for resolution.~~

~~(3) The committee shall have the following duties and authority regarding examinations:~~

~~(A) Shall advise the board as to the type of license examination it deems appropriate for the various dental auxiliary license categories.~~

~~(B) Shall, at the direction of the board, develop or cause to be developed, administer, or both, examinations in accordance with the board's instructions and periodically report to the board on the progress of these examinations. The following shall apply to the examination procedure:~~

~~(i) The examination shall be submitted to the board for its approval prior to its initial administration.~~

~~(ii) Once an examination has been approved by the board, no further approval is required unless a major modification is made to the examination.~~

~~(iii) The committee shall report to the board on the results of each examination and shall, where appropriate, recommend pass points.~~

~~(iv) The board shall set pass points for all dental auxiliary licensing examinations.~~

~~(C) May appoint board members to any examination committee established pursuant to subparagraph (B).~~

~~(4) The committee shall periodically report and make recommendations to the board concerning the level of fees for dental auxiliaries and the need for any legislative fee increase. However, the board retains final authority to set all fees.~~

~~(5) The committee shall be responsible for all aspects of the license renewal process, which shall be accomplished in accordance with this chapter and board regulations. The committee may delegate any or all of its functions under this paragraph to its staff.~~

~~(6) The committee shall have no authority with respect to the approval of continuing education providers and the board retains all of this authority.~~

~~(7) The committee shall advise the board as to appropriate standards of conduct for auxiliaries, the proper ordering of enforcement priorities, and any other enforcement-related matters that the board may, in the future, delegate to the committee. The board shall retain all authority with respect to the enforcement actions, including, but not limited to, complaint resolution, investigation, and disciplinary action against auxiliaries.~~

~~(8) The committee shall have the following duties regarding regulations:~~

~~(A) To review and evaluate all suggestions or requests for regulatory changes related to dental auxiliaries.~~

~~— (B) To report and make recommendations to the board, after consultation with departmental legal counsel and the board's executive officer.~~

~~— (C) To include in any report regarding a proposed regulatory change, at a minimum, the specific language of the proposed changes and the reasons for and facts supporting the need for the change. The board has the final rulemaking authority.~~

~~SEC. 29. — Section 1751 of the Business and Professions Code, as amended by Section 8 of Chapter 621 of the Statutes of 2005, is amended to read:~~

~~1751. (a) The board, upon recommendation of the committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent with and necessary to implement the provisions of this article, and the settings within which each may practice.~~

~~— (b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Legislature and the Office of the Consumer Advocate. After the initial review, a review shall be conducted at least once every five to seven years thereafter, and the board shall update regulations as necessary to keep them current with the state of dental practice.~~

~~— (c) This section shall become operative on January 1, 2008.~~

~~SEC. 30. — Section 2001 of the Business and Professions Code is amended to read:~~

~~2001. There is in the Department of Consumer Affairs a Medical Board of California that consists of 21 members, nine of whom shall be public members.~~

~~— The Governor shall appoint 19 members to the board, subject to confirmation by the Senate, seven of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occur on or after January 1, 1983.~~

~~SEC. 31. — Section 2460 of the Business and Professions Code is amended to read:~~

~~2460. There is created within the jurisdiction of the Medical Board of California and its divisions the California Board of Podiatric Medicine.~~

~~SEC. 32. — Section 2531 of the Business and Professions Code is amended to read:~~

~~2531. There is in the Department of Consumer Affairs a Speech-Language Pathology and Audiology Board in which the enforcement and administration of this chapter is vested. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members.~~

~~SEC. 33. — Section 2569 of the Business and Professions Code is repealed.~~

~~SEC. 34. — Section 2570.19 of the Business and Professions Code is amended to read:~~

~~2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.~~

~~— (b) The members of the board shall consist of the following:~~

~~— (1) Three occupational therapists who shall have practiced~~

~~occupational therapy for five years.~~

~~(2) One occupational therapy assistant who shall have assisted in the practice of occupational therapy for five years.~~

~~(3) Three public members who shall not be licensees of the board or of any board referred to in Section 1000 or 3600.~~

~~(c) The Governor shall appoint the three occupational therapists and one occupational therapy assistant to be members of the board. The Governor, the Senate Rules Committee, and the Speaker of the Assembly shall each appoint a public member. Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.~~

~~(d) All members shall be residents of California at the time of their appointment. The occupational therapist and occupational therapy assistant members shall have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least five years preceding their appointments.~~

~~(e) The public members may not be or have ever been occupational therapists or occupational therapy assistants or in training to become occupational therapists or occupational therapy assistants. The public members may not be related to, or have a household member who is, an occupational therapist or an occupational therapy assistant, and may not have had, within two years of the appointment, a substantial financial interest in a person regulated by the board.~~

~~(f) The Governor shall appoint two board members for a term of one year, two board members for a term of two years, and one board member for a term of three years. Appointments made thereafter shall be for four-year terms, but no person shall be appointed to serve more than two consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms proscribed by this section. Vacancies shall be filled by appointment for the unexpired term. The board shall annually elect one of its members as president.~~

~~(g) The board shall meet and hold at least one regular meeting annually in the Cities of Sacramento, Los Angeles, and San Francisco. The board may convene from time to time until its business is concluded. Special meetings of the board may be held at any time and place designated by the board.~~

~~(h) Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).~~

~~(i) Members of the board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties in accordance with Section 103.~~

~~(j) The appointing power shall have the power to remove any member of the board from office for neglect of any duty imposed by state law, for incompetency, or for unprofessional or dishonorable conduct.~~

~~(k) A loan is hereby authorized from the General Fund to the Occupational Therapy Fund on or after July 1, 2000, in an amount of up to one million dollars (\$1,000,000) to fund operating, personnel, and other startup costs of the board. Six hundred ten thousand dollars (\$610,000) of this loan amount is hereby appropriated to the board to use in the 2000-01 fiscal year for the purposes described in~~

~~this subdivision. In subsequent years, funds from the Occupational Therapy Fund shall be available to the board upon appropriation by the Legislature in the annual Budget Act. The loan shall be repaid to the General Fund over a period of up to five years, and the amount paid shall also include interest at the rate accruing to moneys in the Pooled Money Investment Account. The loan amount and repayment period shall be minimized to the extent possible based upon actual board financing requirements as determined by the Department of Finance.~~

~~SEC. 35. Section 2602 of the Business and Professions Code is amended to read:~~

~~2602. The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter.~~

~~SEC. 36. Section 2701 of the Business and Professions Code is amended to read:~~

~~2701. There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.~~

~~Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.~~

~~SEC. 37. Section 2841 of the Business and Professions Code is amended to read:~~

~~2841. There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.~~

~~Within the meaning of this chapter, board, or the board, refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~SEC. 38. Section 2920 of the Business and Professions Code is amended to read:~~

~~2920. The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.~~

~~SEC. 39. Section 3010.5 of the Business and Professions Code is amended to read:~~

~~3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.~~

~~Six members of the board shall constitute a quorum.~~

~~(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.~~

~~SEC. 40. Section 3502.1 of the Business and Professions Code is amended to read:~~

~~3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).~~

~~(1) A supervising physician and surgeon who delegates authority to~~

~~issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.~~

~~(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.~~

~~(b) "Drug order" for purposes of this section means an order for medication which is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.~~

~~(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.~~

~~(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.~~

~~(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient.~~

~~(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.~~

~~(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled~~

~~substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.~~

~~(c) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.~~

~~(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).~~

~~(g) The committee shall consult with the Medical Board of California and report to the Legislature and the Office of the Consumer Advocate periodically, as necessary, on the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.~~

~~SEC. 41. Section 3504 of the Business and Professions Code is amended to read:~~

~~3504. There is established a Physician Assistant Committee of the Medical Board of California. The committee consists of nine members.~~

~~SEC. 42. Section 3685 of the Business and Professions Code is amended to read:~~

~~3685. The provisions of Article 8 (commencing with Section 3680) shall become operative on January 1, 2004, but the remaining provisions of this chapter shall become operative on July 1, 2004. It is the intent of the Legislature that the initial implementation of this chapter be administered by fees collected in advance from applicants. Therefore, the bureau shall have the power and authority to establish fees and receive applications for licensure or intents to file application statements on and after January 1, 2004. The department shall certify that sufficient funds are available prior to implementing this chapter. Funds from the General Fund may not be used for the purpose of implementing this chapter.~~

~~SEC. 43. Section 3710 of the Business and Professions Code is amended to read:~~

~~3710. The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.~~

~~SEC. 44. Section 4001 of the Business and Professions Code is amended to read:~~

~~4001. (a) There is in the Department of Consumer Affairs a California State Board of Pharmacy in which the administration and enforcement of this chapter is vested. The board consists of 13 members.~~

~~(b) The Governor shall appoint seven competent pharmacists who reside in different parts of the state to serve as members of the board. The Governor shall appoint four public members, and the Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member who shall not be a licensee of the board, any other board under this division, or any board referred to in Section 1000 or 3600.~~

~~(c) At least five of the seven pharmacist appointees to the board shall be pharmacists who are actively engaged in the practice of pharmacy. Additionally, the membership of the board shall include at least one pharmacist representative from each of the following~~

~~practice settings: an acute care hospital, an independent community pharmacy, a chain community pharmacy, and a long-term health care or skilled nursing facility. The pharmacist appointees shall also include a pharmacist who is a member of a labor union that represents pharmacists. For the purposes of this subdivision, a "chain community pharmacy" means a chain of 75 or more stores in California under the same ownership, and an "independent community pharmacy" means a pharmacy owned by a person or entity who owns no more than four pharmacies in California.~~

~~(d) Members of the board shall be appointed for a term of four years. No person shall serve as a member of the board for more than two consecutive terms. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term.~~

~~(e) Each member of the board shall receive a per diem and expenses as provided in Section 103.~~

~~SEC. 45. Section 4003 of the Business and Professions Code is amended to read:~~

~~4003. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The executive officer may or may not be a member of the board as the board may determine.~~

~~(b) The executive officer shall receive the compensation as established by the board with the approval of the Director of Finance. The executive officer shall also be entitled to travel and other expenses necessary in the performance of his or her duties.~~

~~(c) The executive officer shall maintain and update in a timely fashion records containing the names, titles, qualifications, and places of business of all persons subject to this chapter.~~

~~(d) The executive officer shall give receipts for all money received by him or her and pay it to the Department of Consumer Affairs, taking its receipt therefor. Besides the duties required by this chapter, the executive officer shall perform other duties pertaining to the office as may be required of him or her by the board.~~

~~SEC. 46. Section 4200.1 of the Business and Professions Code is amended to read:~~

~~4200.1. (a) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination four times, and may take the Multi-State Pharmacy Jurisprudence Examination for California four times.~~

~~(b) Notwithstanding Section 135, an applicant may take the North American Pharmacist Licensure Examination and the Multi-State Pharmacy Jurisprudence Examination for California four additional times each if he or she successfully completes, at minimum, 16 additional semester units of education in pharmacy as approved by the board.~~

~~(c) The applicant shall comply with the requirements of Section 4200 for each application for reexamination made pursuant to subdivision (b).~~

~~(d) An applicant may use the same coursework to satisfy the additional educational requirement for each examination under subdivision (b), if the coursework was completed within 12 months of the date of his or her application for reexamination.~~

~~(e) For purposes of this section, the board shall treat each failing score on the pharmacist licensure examination administered by the board prior to January 1, 2004, as a failing score on both the~~

~~North American Pharmacist Licensure Examination and the Multi-State Pharmacy Jurisprudence Examination for California.~~

~~(f) From January 1, 2004, to July 1, 2008, inclusive, the board shall collect data on the applicants who are admitted to, and take, the licensure examinations required by Section 4200. The board shall report to the Legislature and the Office of the Consumer Advocate before September 1, 2008, regarding the impact on those applicants of the examination limitations imposed by this section. The report shall include, but not be limited to, the following information:~~

~~(1) The number of applicants taking the examination and the number who fail the examination for the fourth time.~~

~~(2) The number of applicants who, after failing the examination for the fourth time, complete a pharmacy studies program in California or another state to satisfy the requirements of this section and who apply to take the licensure examination required by Section 4200.~~

~~(3) To the extent possible, the school from which the applicant graduated and the school's location and the pass/fail rates on the examination for each school.~~

~~(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

~~SEC. 47. Section 4200.3 of the Business and Professions Code is amended to read:~~

~~4200.3. (a) The examination process shall be regularly reviewed pursuant to Section 139.~~

~~(b) The examination process shall meet the standards and guidelines set forth in the Standards for Educational and Psychological Testing and the Federal Uniform Guidelines for Employee Selection Procedures. The board shall work with the Office of Examination Resources of the department or with an equivalent organization who shall certify at minimum once every five years that the examination process meets these national testing standards. If the department determines that the examination process fails to meet these standards, the board shall terminate its use of the North American Pharmacy Licensure Examination and shall use only the written and practical examination developed by the board.~~

~~(c) The examination shall meet the mandates of subdivision (a) of Section 12944 of the Government Code.~~

~~(d) The board shall work with the Office of Examination Resources or with an equivalent organization to develop the state jurisprudence examination to ensure that applicants for licensure are evaluated on their knowledge of applicable state laws and regulations.~~

~~(e) The board shall annually publish the pass and fail rates for the pharmacist's licensure examination administered pursuant to Section 4200, including a comparison of historical pass and fail rates before utilization of the North American Pharmacist Licensure Examination.~~

~~(f) The board shall annually report to the Legislature, the Office of the Consumer Advocate, and the department, the pass rates of applicants who sat for the national examination compared with the pass rates of applicants who sat for the prior state examination. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.~~

~~SEC. 48. Section 4501 of the Business and Professions Code is amended to read:~~

~~4501. "Board," as used in this chapter, means the Board of~~

~~Vocational Nursing and Psychiatric Technicians.~~

~~SEC. 49. Section 4800 of the Business and Professions Code is amended to read:~~

~~4800. There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of seven members, three of whom shall be public members.~~

~~SEC. 50. Section 4928 of the Business and Professions Code is amended to read:~~

~~4928. The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter. The appointing powers, as described in Section 4929, may appoint to the board a person who was a member of the prior board prior to the repeal of that board on January 1, 2006.~~

~~SEC. 51. Section 4989 of the Business and Professions Code is repealed.~~

~~SEC. 52. Section 4990 of the Business and Professions Code is amended to read:~~

~~4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of 11 members composed as follows:~~

- ~~(1) Two state licensed clinical social workers.~~
- ~~(2) One state licensed educational psychologist.~~
- ~~(3) Two state licensed marriage and family therapists.~~
- ~~(4) Six public members.~~

~~(b) Each member, except the six public members, shall have at least two years of experience in his or her profession.~~

~~(c) Each member shall reside in the State of California.~~

~~(d) The Governor shall appoint four of the public members and the five licensed members with the advice and consent of the Senate. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.~~

~~(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.~~

~~(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.~~

~~(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.~~

~~(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.~~

~~SEC. 53. Section 4990.24 of the Business and Professions Code is repealed.~~

~~SEC. 54. Section 5000 of the Business and Professions Code is amended to read:~~

~~5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licensees of the board or registered by the board. The board has the powers and duties conferred by this chapter.~~

~~The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.~~

~~SEC. 55. Section 5510 of the Business and Professions Code is amended to read:~~

~~5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.~~

~~Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.~~

~~SEC. 56. Section 5621 of the Business and Professions Code is amended to read:~~

~~5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.~~

~~(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.~~

~~(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed whichever first occurs. Vacancies shall be filled for the unexpired term.~~

~~(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.~~

~~SEC. 57. Section 5810 of the Business and Professions Code is amended to read:~~

~~5810. This chapter shall be subject to the process described in Division 1.3 (commencing with Section 474.20).~~

~~SEC. 58. Section 5811 of the Business and Professions Code is amended to read:~~

~~5811. An interior design organization issuing stamps under Section 5801 shall provide to the Legislature and the Office of the Consumer Advocate by September 1, 2008, a report that reviews and assesses the costs and benefits associated with the California Code and Regulations Examination and explores feasible alternatives to that examination.~~

~~SEC. 59. Section 6510 of the Business and Professions Code is amended to read:~~

~~6510. (a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name~~

~~of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.~~

~~(b) The Governor shall appoint, subject to confirmation by the Senate, the chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.~~

~~SEC. 60. Section 6511 of the Business and Professions Code is amended to read:~~

~~6511. (a) There is within the bureau a Professional Fiduciaries Advisory Committee. The committee shall consist of seven members, three of whom shall be licensees actively engaged as professional fiduciaries in this state, and four of whom shall be public members. One of the public members shall be a member of a nonprofit organization advocating on behalf of the elderly, and one of the public members shall be a probate court investigator.~~

~~(b) Each member of the committee shall be appointed for a term of four years, and shall hold office until the appointment of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.~~

~~(c) Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.~~

~~(d) The Governor shall appoint the member from a nonprofit organization advocating on behalf of the elderly, the probate court investigator, and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.~~

~~(e) Every member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.~~

~~(f) The committee shall do all of the following:~~

~~(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.~~

~~(2) Consider and make appropriate recommendations to the bureau in any matter relating to professional fiduciaries in this state.~~

~~(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.~~

~~(4) Meet at least once each quarter. All meetings of the committee shall be public meetings.~~

~~(g) The bureau shall meet and consult with the committee regarding general policy issues related to professional fiduciaries.~~

~~SEC. 61. Section 6710 of the Business and Professions Code is amended to read:~~

~~6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.~~

~~(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.~~

~~SEC. 62. Section 7000.5 of the Business and Professions Code is amended to read:~~

~~7000.5. There is in the Department of Consumer Affairs a~~

~~Contractors' State License Board, which consists of 15 members.~~

~~SEC. 63. Section 7200 of the Business and Professions Code is amended to read:~~

~~7200. There is in the Department of Consumer Affairs a State Board of Guide Dogs for the Blind in whom enforcement of this chapter is vested. The board shall consist of seven members appointed by the Governor. One member shall be the Director of Rehabilitation or his or her designated representative. The remaining members shall be persons who have shown a particular interest in dealing with the problems of the blind, and at least two of them shall be blind persons who use guide dogs.~~

~~SEC. 64. Section 7303 of the Business and Professions Code is amended to read:~~

~~7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.~~

~~(b) The board shall consist of nine members. Five members shall be public members and four members shall represent the professions. The Governor shall appoint three of the public members and the four professions members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.~~

~~(c) The board shall appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director. In the event that a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.~~

~~(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.~~

~~SEC. 65. Section 7304 of the Business and Professions Code is repealed.~~

~~SEC. 66. Section 7810 of the Business and Professions Code is amended to read:~~

~~7810. The Board for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. Except as provided in this section, the board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.~~

~~Each member shall hold office until the appointment and qualification of the member's successor or until one year has elapsed from the expiration of the term for which the member was appointed, whichever occurs first. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the remainder of the unexpired term.~~

~~Each appointment shall be for a four-year term expiring June 1 of the fourth year following the year in which the previous term expired. No person shall serve as a member of the board for more than two consecutive terms.~~

~~The Governor shall appoint three of the public members and the three members qualified as provided in Section 7811. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occurred on or after January 1, 1983.~~

~~At the time the first vacancy is created by the expiration of the term of a public member appointed by the Governor, the board shall be reduced to consist of seven members, four of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist. Notwithstanding any other provision of law, the term of that member shall not be extended for any reason, except as provided in this section.~~

~~SEC. 67. Section 8000 of the Business and Professions Code is amended to read:~~

~~8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.~~

~~SEC. 68. Section 8520 of the Business and Professions Code is amended to read:~~

~~8520. (a) There is in the Department of Consumer Affairs a Structural Pest Control Board, which consists of seven members.~~

~~(b) Subject to the jurisdiction conferred upon the director by Division 1 (commencing with Section 100) of this code, the board is vested with the power to and shall administer the provisions of this chapter.~~

~~(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.~~

~~SEC. 69. Section 8710 of the Business and Professions Code is amended to read:~~

~~8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.~~

~~(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.~~

~~SEC. 70. Section 9882 of the Business and Professions Code is amended to read:~~

~~9882. There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 71. Section 18602 of the Business and Professions Code is amended to read:~~

~~18602. (a) Except as provided in this section, there is in the Department of Consumer Affairs the State Athletic Commission, which consists of seven members. Five members shall be appointed by the Governor, one member shall be appointed by the Senate Committee on Rules, and one member shall be appointed by the Speaker of the Assembly.~~

~~The members of the commission appointed by the Governor are subject to confirmation by the Senate pursuant to Section 1322 of the Government Code.~~

~~No person who is currently licensed, or who was licensed within the last two years, under this chapter may be appointed or reappointed to, or serve on, the commission.~~

~~(b) In appointing commissioners under this section, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall make every effort to ensure that at least four of the members of the commission shall have experience and demonstrate expertise in one of the following areas:~~

~~(1) A licensed physician or surgeon having expertise or specializing in neurology, neurosurgery, head trauma, or sports medicine. Sports medicine includes, but is not limited to, physiology, kinesiology, or other aspects of sports medicine.~~

~~(2) Financial management.~~

~~(3) Public safety.~~

~~(4) Past experience in the activity regulated by this chapter, either as a contestant, a referee or official, a promoter, or a venue operator.~~

~~(c) Each member of the commission shall be appointed for a term of four years. All terms shall end on January 1. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No commission member may serve more than two consecutive terms.~~

~~(d) Notwithstanding any other provision of this chapter, members first appointed shall be subject to the following terms:~~

~~(1) The Governor shall appoint two members for two years, two members for three years, and one member for four years.~~

~~(2) The Senate Committee on Rules shall appoint one member for four years.~~

~~(3) The Speaker of the Assembly shall appoint one member for four years.~~

~~(4) The appointing powers, as described in subdivision (a), may appoint to the commission a person who was a member of the prior commission prior to the repeal of that commission on July 1, 2006.~~

~~SEC. 72. Section 18602.5 of the Business and Professions Code is amended to read:~~

~~18602.5. (a) The commission shall adopt and submit a strategic plan to the Governor and the Legislature on or before September 30, 2008. The commission shall also submit a report to the Governor and the Legislature on the status of the adoption of the strategic plan on or before March 1, 2008. The strategic plan shall include, but shall not be limited to, efforts to resolve prior State Athletic Commission deficiencies in the following areas:~~

~~(1) Regulation of the profession, what fees should be paid for this regulation, and the structure and equity of the fees charged.~~

~~(2) The effect and appropriateness of contracts made pursuant to Section 18828.~~

~~(3) Costs to train ringside physicians, referees, timekeepers, and judges.~~

~~(4) Steps that need to be taken to ensure sufficient sources of revenue and funding.~~

~~(5) Necessity for review and modification of organizational procedures, the licensing process, and the complaint process.~~

~~(6) Outdated information technology.~~

~~(7) Unorganized and improper accounting.~~

~~(8) Miscalculations at events, a lack of technology to record proper calculations, and funding issues.~~

~~(9) The health and safety of the participants and the public in attendance at events regulated under this chapter, including costs of examinations under Section 18711.~~

~~(b) The commission shall solicit input from the public, the State Auditor, the Little Hoover Commission, the Center for Public Interest Law, and others as necessary in preparing and adopting the strategic plan.~~

~~(c) The commission shall report on progress in implementing the strategic plan to the Director of Consumer Affairs, the Governor, and the Legislature on or before September 30, 2009.~~

~~SEC. 73. Section 18824 of the Business and Professions Code is amended to read:~~

~~18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within five working days after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission the following:~~

~~(1) A written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars (\$2,000,000), and the gross price for the contest or wrestling exhibition charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when these expenses are approved by the commission.~~

~~(2) A fee of 5 percent, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, except that for any one contest, the fee shall not exceed the amount of one hundred thousand dollars (\$100,000). The commission shall report to the Legislature and the Office of the Consumer Advocate on the fiscal impact of the one hundred thousand dollar (\$100,000) limit on fees collected by the commission for admissions revenues.~~

~~(A) The amount of the gross receipts upon which the fee provided for in paragraph (2) is calculated shall not include any assessments levied by the commission under Section 18711.~~

~~(B) (i) If the fee for any one boxing contest exceeds seventy thousand dollars (\$70,000), the amount in excess of seventy thousand dollars (\$70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund.~~

~~(ii) If the report required by subdivision (b) of Section 18618 recommends that the Boxers' Pension Fund shall be expanded to include all athletes licensed under this chapter, the commission, by regulation, shall require, for all contests where the fee exceeds seventy thousand dollars (\$70,000), the amount in excess of seventy thousand dollars (\$70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund only if all athletes licensed under this chapter are made eligible for the Boxers' Pension Fund.~~

~~(C) The fee shall apply to the amount actually paid for admission and not to the regular established price.~~

~~(D) No fee is due in the case of a person admitted free of charge. However, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest, or wrestling exhibition exceeds 33 percent of the total number of spectators, then a fee of one dollar (\$1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 33 percent of the total number of spectators.~~

~~(E) The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars (\$500).~~

~~(3) A fee of up to 5 percent, to be established by the commission through regulations to become operative on or before July 1, 2008, and updated periodically as needed, of the gross price, exclusive of any federal taxes paid thereon, for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars (\$1,000) or more than twenty-five thousand dollars (\$25,000).~~

~~(b) As used in this section, "person" includes a promoter, club, individual, corporation, partnership, association, or other organization, and "wrestling exhibition" means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.~~

~~SEC. 74. Section 18882 of the Business and Professions Code is amended to read:~~

~~18882. (a) At the time of payment of the fee required by Section 18824, a promoter shall pay to the commission all amounts scheduled for contribution to the pension plan. If the commission, in its discretion, requires pursuant to Section 18881, that contributions to the pension plan be made by the boxer and his or her manager, those contributions shall be made at the time and in the manner prescribed by the commission.~~

~~(b) All contributions to finance the pension plan shall be deposited in the State Treasury and credited to the Boxers' Pension Fund, which is hereby created. Notwithstanding the provisions of Section 13340 of the Government Code, all moneys in the Boxers' Pension Fund are hereby continuously appropriated to be used exclusively for the purposes and administration of the pension plan.~~

~~(c) The Boxers' Pension Fund is a retirement fund, and no moneys within it shall be deposited or transferred to the General Fund.~~

~~(d) The commission has exclusive control of all funds in the Boxers' Pension Fund. No transfer or disbursement in any amount from this fund shall be made except upon the authorization of the commission and for the purpose and administration of the pension plan.~~

~~(e) Except as otherwise provided in this subdivision, the commission or its designee shall invest the money contained in the Boxers' Pension Fund according to the same standard of care as provided in Section 16040 of the Probate Code. The commission has exclusive control over the investment of all moneys in the Boxers' Pension Fund. Except as otherwise prohibited or restricted by law, the commission may invest the moneys in the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction that the commission in its informed opinion determines is prudent.~~

~~(f) The administrative costs associated with investing, managing, and distributing the Boxers' Pension Fund shall be limited to no more than 20 percent of the average annual contribution made to the fund~~

~~in the previous two years, not including any investment income derived from the corpus of the fund. Diligence shall be exercised by administrators in order to lower the fund's expense ratio as far below 20 percent as feasible and appropriate. The commission shall report to the Legislature and the Office of the Consumer Advocate on the impact of this provision on or before March 1, 2008.~~

~~SEC. 75. Section 22259 of the Business and Professions Code is repealed.~~

~~SEC. 76. Section 9148.8 of the Government Code is amended to read:~~

~~9148.8. (a) The Office of the Consumer Advocate, acting pursuant to a request from the chairperson of the appropriate policy committee, shall evaluate a plan prepared pursuant to Section 9148.4 or 9148.6.~~

~~(b) Evaluations prepared by the Office of the Consumer Advocate pursuant to this section shall be provided to the respective policy and fiscal committees of the Legislature pursuant to rules adopted by each committee for this purpose.~~

~~SEC. 77. Section 9148.51 of the Government Code is amended to read:~~

~~9148.51. (a) It is the intent of the Legislature that all existing and proposed state boards be subject to review upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, as provided in Division 1.3 (commencing with Section 474.20) of the Business and Professions Code, to evaluate and determine whether the highest priority of each board is the protection of the public.~~

~~(b) If any state board is determined to be deficient pursuant to Section 474.21 of the Business and Professions Code, the incumbent members of the board shall be removed from office without a hearing as described in Section 474.21 of the Business and Professions Code, and a successor board shall be appointed pursuant to Section 101.1 of the Business and Professions Code.~~

~~SEC. 78. Section 9148.52 of the Government Code is repealed.~~

Bill Number: SB 1402
Introduced: February 21, 2008
Last Amended: June 11, 2008

Author: Corbett
Vote: Majority

Bill Summary:

This bill would require the Board of Chiropractic Examiners (BCE) to disclose, via the Internet, licensing status information, suspensions, and revocations. The bill would require a chiropractor to report to the BCE the bringing of an indictment or information of charges or convictions of any misdemeanor or felony against them. In addition, the bill would require an insurer providing professional liability insurance to a chiropractor to report to the BCE of any settlement or arbitration award of over \$2,000 for certain damages, and would impose a fine for failing to provide timely reports.

Purpose of the Bill:

According to the Author, this bill is intended to increase consumer protection and provide the BCE with information in a timely manner to take appropriate action, if warranted.

Existing Law:

Certain entities within the Department of Consumer Affairs and the Department of Real Estate are required to provide information, excluding personal information, on the Internet relative to the status of every license issued. Insurers providing professional liability insurance to health care professionals are required to send reports to the appropriate licensing agency regarding any settlement or arbitration awards of \$3,000. Certain health care providers are required to report to the appropriate licensing agency the bringing of an indictment and/or information charging or conviction of a felony or misdemeanor against a licensee.

Specifically, this bill would:

- Add the BCE to the entities required to provide licensing status information.
- Require insurers providing liability insurance to report to the BCE any settlement or arbitration award over \$2,000 of a claim or action for damages for death or injury caused by the licensees' negligence, error, or omission in practice, or rendering of unauthorized professional services within 30 days after service of the arbitration award.
- Impose a fine to the insurer providing liability insurance that fails to provide timely reports of \$1, 000 for each day that a report is delinquent.

The fine imposed would be paid to the BCE and available for expenditure upon appropriation by the Legislature.

- Require a chiropractor to report to the BCE a bringing of an indictment, charging of a felony, or misdemeanor against the licensee, within 30 days from the date of an indictment or information of the charges. A licensee that fails to comply with the reporting requirement is subject to a fine not to exceed \$5,000.

Fiscal Impact:

The BCE currently provides licensing status information, suspensions, revocations, and other related enforcement actions, via the Internet. The BCE will experience an increase in workload associated with the review and, possible investigation of the settlement or arbitration reports received from insurance providers. However, the BCE staff believes this would not significantly increase workload, and should be able to be absorbed with existing staff. In addition, with the imposed fine requirements, the BCE may experience an increase in revenue.

BILL NUMBER: SB 1402 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 11, 2008
AMENDED IN SENATE APRIL 10, 2008
AMENDED IN SENATE APRIL 1, 2008

INTRODUCED BY Senator Corbett

FEBRUARY 21, 2008

An act to amend Sections 27, ~~801~~, 802.1, and 1005 of , and to amend, repeal, and add Section 801 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Corbett. Reporting requirements.

Existing law provides for the licensure, registration, and regulation of healing arts practitioners by various boards and bureaus, including, but not limited to, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the Veterinary Medical Board, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology Board, the Respiratory Care Board of California, the California Board of Occupational Therapy, and the Bureau of Naturopathic Medicine. Existing law, the Chiropractic Act, a statute enacted by initiative, creates the State Board of Chiropractic Examiners, which licenses and regulates the practice of chiropractic. Existing law requires certain entities within the Department of Consumer Affairs and the Department of Real Estate to provide information, excluding personal information, on the Internet relative to the status of every license issued by the entity, as specified. Existing law requires certain health care providers to report to their licensing boards the bringing of an indictment or information charging a felony against him or her or his or her conviction of a felony or misdemeanor. ~~Existing law requires insurers providing professional liability insurance to certain health care professionals to send a complete report to the applicable licensing entity as to any settlement or arbitration award meeting certain criteria.~~

This bill would add the State Board of Chiropractic Examiners and specified other healing arts boards and bureaus to the entities required to provide the licensing status information. The bill would require a chiropractor to report to the State Board of Chiropractic Examiners the bringing of an indictment or information charging a felony against them or their conviction of any felony or misdemeanor. ~~The bill would also require an insurer providing professional liability insurance to a chiropractor to send a complete report to the Chiropractic Examiners Board, as specified, of any settlement or arbitration award of over \$2,000 of a claim or action for damages meeting certain criteria.~~

Existing law requires insurers providing professional liability insurance to certain health care professionals to send a complete report within a specified time period to the applicable licensing entity as to any settlement or arbitration award over \$3,000 of a claim or action for damages meeting certain criteria.

This bill would require an insurer providing professional liability insurance to a chiropractor to pay a fine for failing to timely provide that report and would, until January 1, 2012, require an insurer providing professional liability insurance to a chiropractor to send that report as to any settlement or arbitration award over \$2,000, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on

its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The Cemetery and Funeral Bureau shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(13) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(14) The Board of Registered Nursing shall disclose information on its licensees.

(15) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.

(16) The Veterinary Medical Board shall disclose information on its licensees and registrants.

(17) The Physical Therapy Board of California shall disclose information on its licensees.

(18) The California State Board of Pharmacy shall disclose information on its licensees.

(19) The Speech-Language Pathology and Audiology Board shall disclose information on its licensees.

(20) The Respiratory Care Board of California shall disclose information on its licensees.

(21) The California Board of Occupational Therapy shall disclose information on its licensees.

(22) The Bureau of Naturopathic Medicine shall disclose information on its licensees.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 801 of the Business and Professions Code is amended to read:

801. (a) Except as provided in Section 801.01 and subdivisions (b), (c), (d), and (e) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the

arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral ~~Science~~ ~~Examiners~~

~~Sciences~~ as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) (1) Every insurer providing professional liability insurance to a chiropractor licensed pursuant to the Chiropractic Act shall send a complete report to the State Board of Chiropractic Examiners of any settlement or arbitration award over two thousand dollars (\$2,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(2) An insurer that fails to send the report described in paragraph (1) within the time period described in paragraph (1) shall pay a fine not to exceed one thousand dollars (\$1,000) for each day that the report is delinquent. These moneys shall be paid to the State Board of Chiropractic Examiner's Fund and shall be available for expenditure upon appropriation by the Legislature.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by this section has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

(h) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 3. Section 801 is added to the Business and Professions Code, to read:

801. (a) (1) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(2) An insurer providing professional liability insurance to a chiropractor licensed pursuant to the Chiropractic Act that fails to send the report described in paragraph (1) to the State Board of Chiropractic Examiners within the time period described in paragraph (1) shall pay a fine of one thousand dollars (\$1,000) for each day that the report is delinquent. These moneys shall be paid to the State Board of Chiropractic Examiners' Fund and shall be available for expenditure upon appropriation by the Legislature.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or

rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by this section has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(f) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

(g) This section shall become operative on January 1, 2012.

~~SEC. 3.~~ SEC. 4. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A physician and surgeon, an osteopathic physician and surgeon, a doctor of podiatric medicine, and a chiropractor shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

~~SEC. 4.~~ SEC. 5. Section 1005 of the Business and Professions Code is amended to read:

1005. The provisions of Sections 12.5, 23.9, 27, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 730.5, 731, 801, 802.1, and 851 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****September 24 – 25, 2008****10:00 a.m.****State Capitol****Assembly Room 126****Sacramento, CA 95814****Wednesday, September 24, 2008****10:00 a.m.****AGENDA****1. PUBLIC SESSION Call to Order**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

2. Chair's Report**3. Approval of Minutes**

- A. May 22, 2008, Public Session
- B. July 30 – 31, 2008, Public Session

4. Public Comment**5. Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****6. Executive Officer's Report**

- A. Budget
- B. Personnel
- C. Licensing
- D. Enforcement
- E. Bureau of State Audits

7. Committee Reports

- A. Continuing Education Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved Continuing Education Providers
 - Update on the Continuing Education Work Group's Proposed Regulations
- B. Licensing Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved License Applications
 - Update on the Chiropractic Law and Professional Practice Examination
- C. Scope of Practice Committee - Discussion and Possible Action
 - Recognition of Chiropractic Specialties re Advertising
 - Chiropractic Scope of Practice for X-ray
 - Manipulation Under Anesthesia Revised Proposed Regulatory Language
- D. Public Relations Committee - Discussion and Possible Action

REGULATIONS UPDATE – Discussion and Possible Action

- Letter of Admonishment

8. Public Comment

9. Future Agenda Items

10. Hearings re: Petition for Reinstatement of Revoked License

- Craig Maurer
- Robert Strohbach

11. CLOSED SESSION:

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions
Pursuant to California Government Code Section 11126(c)(3)

12. PUBLIC SESSION: Announcements re Closed Session

**Thursday, September 25, 2008
8:00 a.m.**

13. CLOSED SESSION

A. Pursuant to California Government Code Section 11126(e)

- Catherine Hayes v. Board of Chiropractic Examiners
Sacramento County Superior Court Case No. 07AS03721
- David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes
Sacramento County Superior Court, Case No. 07AS03721

14. PUBLIC SESSION: Call to Order

- Announcements Re Closed Session

15. Hearings re: Petition for Reinstatement of Revoked License

- Stanford Sher
- Parviz Kovoossi
- Paul Bologna
- Carlos Seals

16. Hearings re: Petition for Early Termination of Probation

- Lee Tan Nguyen
- Steve Ram Nadkeswhar
- Donald Ringer

17. CLOSED SESSION:

**18. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions
Pursuant to California Government Code Section 11126(c)(3)**

19. PUBLIC SESSION Announcements re Closed Session

20. Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****May 22, 2008****1625 North Market Blvd., Room S102
Sacramento, CA 95814****Board Members Present**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
James Maynard, Staff Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 10:36 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Chair's Report

Dr. Lerner recognized the committees for the work that they have completed, and he applauded the staff for their efforts.

Approval of Minutes

**MR. CONRAN MOVED TO APPROVE THE MARCH 27, 2008 MINUTES AS AMENDED.
DR. LUBKIN SECONDED THE MOTION.**

VOTE: 6-0

MOTION CARRIED

DISCUSSION:

Dr. Tyler asked that the minutes reflect his objection to Kathleen Creason's comments on the MUA discussion.

Mr. Conran stated that anyone coming to a public meeting should be able to state their opinions without being chastised by the board. Mr. Conran said it is incumbent upon the Board to welcome any public comments whether the Board agrees with the comments or not.

Dr. Lubkin said since he has been on the Board, the Board has always encouraged and welcomed public comments.

Dr. Columbu suggested that the minutes reflect more details of the discussion to ensure nothing is missed. Dr. Columbu offered an example of the comments made at the March 1, 2007, Board meeting. Mr. Conran offered to take this item up in the Government Relations Committee.

PUBLIC COMMENT:

Mr. Conran announced that Mr. David Prescott died and that he was deeply saddened by his passing. Mr. Conran recommended that the Board send a letter to Mr. Prescott's family expressing the Board's appreciation for his tireless work on behalf of the profession.

Dr. Lerner agreed about the letter and expressed his sadness over Mr. Prescott's passing.

Dr. Lubkin asked that all Board Members have an opportunity to sign the letter.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.

Ms. Powell just returned from family medical leave and did not have a topic for this meeting. Ms. Powell stated she has discussed and trained the Board on every aspect of the Bagley-Keene Act over the past year and at this point will only bring up issues as needed.

Mr. Conran recommended that this subject remain on future agendas items for new Board Members.

Dr. Lubkin asked how Board Members recuse themselves from an agenda item. Ms. Powell said the Board Member would need to say he or she was going to recuse themselves and disclose the reasons why. During close session the minutes must reflect that the Board Member left the room and the time the Board Member returned. During open sessions, the Board Member can remain in the hearing but cannot participate in the discussion.

Executive Officer's Report

Mr. Stiger discussed the status of the current year budget and the results of the budget hearings for next fiscal year. Both the Assembly and Senate budget committees approved our 08/09 budget, which included an additional 15% for six investigator positions.

Mr. Stiger discussed a new organizational chart effective July 1, 2008, and an update of the filling vacant positions.

Judge Duvaras asked if staffing levels have increased under the current Executive Officer. Mr. Stiger explained that with the six additional field investigator positions the staffing level has indeed increased. Judge Duvaras asked if Mr. Stiger had an assistant. Mr. Stiger stated that he does not have an assistant but will consider creating a position as the program grows.

Dr. Lubkin asked if our staffing levels justified additional managers. Mr. Stiger explained that he submitted personnel packages to add two managers. These packages were reviewed and approved by the DCA personnel office.

Mr. Stiger introduced Ray Delaney and Valerie James as the newest staff members. Dr. Lerner welcomed both on behalf of the Board.

Mr. Stiger provided an update on the recruitment and appointment of all vacant positions.

Dr. Lubkin asked about the status of hiring the special investigators. Mr. Stiger explained that it would take about 45 days to bring on the Supervising Special Investigator and then begin hiring the investigators. Mr. Stiger estimated that the investigators would be brought on in August.

Dr. Lubkin asked when would the Board be caught up on enforcement matters. Mr. Stiger anticipates being current by the end of the year.

Marlene Valencia presented the licensing report. Ms. Valencia thanked the chiropractic colleges and specifically the registrar's office for their assistance and support over the past several months. Ms. Valencia announced that with the addition of new staff the licensing unit is current with all applications.

Ms. Valencia discussed the licensing statistics. Mr. Conran asked if the testing statistics have been consistent over the past several years. Mr. Conran raised a concern with the high failure rate and wondered if the Board could assist without lowering its standards. Ms. Valencia said she would research the test scores.

Dr. Lerner questioned keeping running totals of licensing statistics. Dr. Lerner recommended keeping the licensing statistics year by year rather than a running total. Mr. Stiger agreed with the recommendation and said the Board would receive a revised report at the next Board meeting.

Judge Duvaras asked the definitions of a satellite office, chiropractic corporation, and referral service. Ms. Valencia, Mr. Stiger, and Ms. Powell explained these licensing categories to Judge Duvaras.

Judge Duvaras asked if the chiropractic referral service was similar to that of the State Bar's referral service. Ms. Powell explained that the Board regulates chiropractic referral services but does not require chiropractic referral services to refer a specific number of chiropractors to consumers.

Ms. Powell explained how consumers could conduct their own research through accessing the Board's website.

Dr. Lubkin asked Mr. Stiger if the licensing report could include disciplinary actions. Dr. Lerner reiterated that enforcement reporting will be important as the Board moves forward.

Dr. Lubkin expressed a concern that California has lost thousands of licensees over the past decade and would like statistical information on why this is occurring. Mr. Stiger stated that this study would be more appropriate conducted by an association.

Mr. Conran agreed with Dr. Lubkin that the Board should be kept abreast of the demographic changes occurring in California. Ms. Powell stated that Board staff would not be able to collect this information and suggested that the Board contract with an outside consultant to conduct this study. Mr. Conran recommended that Government Relations Committee take this issue up.

Mr. Stiger presented the Enforcement Report. Dr. Tyler expressed a concern about the Board acting on anonymous complaints. Mr. Stiger stated that the Board is updating its complaint intake procedures. Mr. Stiger said the Board does receive a number of legitimate anonymous complaints particularly dealing with unlicensed activity. Dr. Tyler is concerned that the Board may be spending resources investigating anonymous complaints because the complainant does not like a certain chiropractor. Mr. Stiger said the Board does not investigate every single complaint it receives.

Dr. Lubkin requested that the Chair assign the Continuing Education Committee to work with the associations to educate licensees in those core areas that constitute the majority of the complaints the Board receives.

Dr. Lerner agreed and added that the Continuing Education Committee should review bone fide ethics classes that require testing to demonstrate comprehension. Dr. Lerner would like a requirement put in place that requires licensees to take a class on the Board's laws and regulations.

COMMITTEE REPORTS

Enforcement Committee:

Dr. Lubkin reported that the Enforcement Committee voted to recommend to the full Board that CCR 306.1 be repealed.

MOTION: DR. LUBKIN MOVED THAT THE BOARD REPEAL CCR 306.1.

SECONDED: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTIONED CARRIES

Public Comment:

Dr. Charles Davis cautioned with the repeal of 306.1 there is nothing in the regulation structure that would prevent what happened in the past. Dr. Davis raised a concern that once the current staff left enforcement could revert to the old system.

Licensing Committee:

Mr. Stiger presented the report. Mr. Stiger discussed the need for the full Board to ratify license applications previously approved by Board staff.

MOTION: JUDGE DUVARAS MOVED THAT THE BOARD RATIFY LICENSES PREVIOUSLY APPROVED BY THE BOARD STAFF SINCE JULY 1, 2007.

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIES

Continuing Education Committee:

Dr. Tyler discussed the list of Continuing Education Providers previously approved by the Board staff. Dr. Tyler expressed a concern that Board staff cannot approve courses without Board Member assistance. Mr. Stiger said he would agendize this topic at the next Continuing Education Committee meeting.

Mr. Conran asked if the list of providers were new or had they been providing courses in the past. Mr. Stiger stated these providers have been approved since May 2006.

Judge Duvaras asked for the number of providers that are currently approved. Mr. Stiger said he could provide that information in future reports.

Dr. Tyler discussed the proposed 24 hour increase in continuing education requirement and the possibility of distance learning. Dr. Tyler thanked Mr. Carlye Brankensiek for his presentation on distance learning at the last Continuing Education Committee Meeting.

Dr. Lerner asked for clarification on the Continuing Education Work Group and expressed his appreciation for the work group's anticipated proposals.

Mr. Conran said the idea of cross discipline classes was intriguing. He expressed concern about the Board allowing Continuing Education credit for classes on how to run a business.

Dr. Lerner provided an example of cross discipline training in which the North American Spine Society provides an annual course attended by 600 health professionals in multiple disciplines.

Dr. Tyler stressed that the classes must emphasize the practice of chiropractic.

Dr. Lubkin added that during the committee meeting the members asked the providers to submit security information regarding distance learning. Dr. Lubkin discussed instituting a fast track approval for chiropractic colleges, associations, and PACE approved programs. Smaller more individual providers would continue to use the current approval process. Dr. Lubkin discussed a goal of auditing 10% of all courses and courses regarding mandatory reporting.

Dr. Lerner reminded the committee to research potential reciprocity with FCLB for continuing education courses especially for nationally based providers.

Scope of Practice Committee:

Dr. Lubkin reported that the committee discussed chiropractic specialties and issues related to advertising and that Board staff would be researching this topic.

Dr. Lerner added that the committee voted to recommend to the full board that the board begin the regulation process to recognize chiropractic specialties and write a letter informing the Department of Industrial Relations, Division of Workers Compensation of this action.

Ms. Powell added that the board is limited to recognizing specialties through advertising restrictions, which is the method used by the Medical Board and Dental Board. Ms. Powell states this needs to be made very clear to avoid the perception that the Board is attempting to create an additional license category.

Dr. Lerner asked for an example of an advertising restriction. Ms. Powell gave an example that you can only advertise as an orthopedist specialist in chiropractic care if you have a certification from a bona fide private organization.

MOTION: DR. LERNER MOVED THAT THE BOARD BEGIN THE REGULATORY PROCESS OF RECOGNIZING CHIROPRACTIC SPECIALTIES AND SEND A LETTER TO THE DEPARTMENT OF INDUSTRIAL RELATIONS INFORMING THEM THAT WE ARE BEGINNING THIS PROCESS.
SECONDED: DR. TYLER SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

A discussion ensued regarding Department of Industrial Relations' proposed regulation.

Mr. Conran spoke in support of the motion and suggested that the Board raise this issue to the highest level and speak to John Duncan.

Dr. Charles Davis stated that establishing chiropractic specialties would not increase the chiropractic scope of practice.

Mr. Caryle Brakensiek, CSIMS, spoke in support of the motion and urged that the Board move with all deliberate speed to get this approved.

Kristine Schultz, CCA, spoke in support of the regulation as described by Ms. Powell.

Dr. Charles Davis, stated the Board recognized chiropractic orthopedics in 1996.

Dr. Lubkin asked for an update on chiropractic scope of practice for x-ray use. Ms. Powell introduced James Maynard who is a new attorney for the Department of Consumer Affairs. Mr. Maynard will provide a legal paper to the committee regarding this issue, which will be presented to the committee.

Dr. Lubkin commented that chiropractors were taught in Chiropractic College to x-ray the skull, torso, extremities, and the spine and he is looking forward to Mr. Maynard's legal opinion.

Dr. Lerner commented that the Initiative Act does not specify what kind of x-rays chiropractors can take. He continued that the regulations allow for diagnostic x-rays but does not specify chiropractic x-rays. Dr. Lerner said he does not understand the need for a legal opinion.

Ms. Powell stated she does not read the law that way. Ms. Powell added that no background work has been completed and the legal opinion provides the Board with the background to make an informed decision.

Dr. Lerner and Dr. Lubkin requested to meet with Mr. Maynard to discuss prior to him writing the legal opinion.

Dr. Schell commented that the Board has taken a long time to make a decision and asked if he could contact Mr. Maynard. Ms. Powell recommended that Dr. Schell could submit additional information to Mr. Stiger.

Dr. Cheryl Dietrick provided background information on how she became aware of the chiropractic x-ray issue. Dr. Dietrick hopes that this would open a door to work with other medical health care providers.

Government Relations Committee:

Mr. Conran presented the major topics addressed at the last committee meeting including: hiring staff, sunset review, and Bureau of State Audit's 60 day response, and state issued e-mail accounts.

Mr. Conran reported that the committee thought favorably of the 60 day BSA audit response.

MOTION: MR. CONRAN MOVED THAT THE DRAFT 60 DAY AUDIT RESPONSE BE FORWARDED AS THE BOARD'S OFFICIAL RESPONSE WITH A COPY TO THE GOVERNOR'S OFFICE, STATE AND CONSUMER SERVICES AGENCY, AND THE DEPARTMENT OF CONSUMER AFFAIRS.

SECONDED: JUDGE DUVARAS SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED.

Dr. Tyler raised concerns about hiring a chiropractic consultant in the same capacity it was formally used. Mr. Stiger stated that this is an issue that needs to be addressed.

Dr. Lerner recommended that this issue be taken up by the Government Relations committee.

Mr. Conran stated that the committee is sensitive to Dr. Tyler's concerns and the committee will provide continual updates to the Board.

Mr. Conran presented the BSA recommendation to issue e-mail accounts to Board Members and discussed the benefits.

Judge Duvaras presented an analysis prepared by Roger Calton regarding the major problems experienced by this Board and former Boards. Mr. Calton recognized the positive improvements made by the Board and the Board's staff. Judge Duvaras congratulated and commended Mr. Calton for his analysis.

MOTION: DR. LUBKIN MOVED THAT THE BOARD IMPLEMENT BOARD MEMBER STATE ISSUED E-MAIL ACCOUNTS EFFECTIVE JUNE 1, 2008.

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0
MOTION CARRIED.

Public Relations Committee:

Dr. Lerner provided an update on the major topics discussed at the committee meeting. Dr. Lerner reported that the committee heard from the Russ Heimrich from the Department of Consumer Affairs. Dr. Lerner said that the committee has requested cost estimates from a few different organizations.

Dr. Lerner discussed the need for a newsletter and informational brochure on how to choose a chiropractor. Dr. Lerner hopes to receive a lot of input from the profession and the public in these areas.

Legislative Committee:

Dr. Lerner reported that the committee recommends that the Board take a "Support if Amended" position on SB 1402 and send a letter to the author.

MOTION: DR. COLUMBU MOVED THAT THE BOARD TAKE A SUPPORT IF AMENDED POSITION ON SB 1402 AND SEND A LETTER TO THE AUTHOR.

SECONDED: DR. TYLER SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED.

Dr. Lerner reported that the committee voted to take a "Support" position on AB 2969 (Lieber).

MOTION: DR. LUBKIN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON AB 2969.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

Dr. Lerner reported that the committee voted to take a "Support" position on SB 1441 (Ridley-Thomas)

MOTION: MR. CONRAN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON SB 1441.

SECONDED: DR. COLUMBU SECONDED THE MOTION

VOTE: 6-0-2

MOTION CARRIED

Judge Duvaras spoke in opposition of the bill because it duplicates what the Board is currently doing.

Dr. Lubkin asked if the author planned to use public interest groups and use them as monitors.

Ms. Powell explained the bill and that it is designed to establish best practices for diversion programs.

Mr. Conran spoke in support of the bill and if it passes we would be able to comment on the diversion program.

Dr. Columbu asked if this bill establishes an enforcement monitor. Ms. Powell said the bill does not establish an enforcement monitor and that if the bill is amended to include an enforcement monitor he would notify the Legislative Committee.

Strategic Planning Committee:

Dr. Tyler reported that the committee reviewed and discussed proposed strategic goals and objectives. He explained this is a work in progress and would keep the Board updated.

Regulations Update:

Mr. Stiger provided an update to the three pending regulation packages.

Mr. Stiger explained that the Board previously approved of proposed regulatory language for the Letter of Admonishment. However, after further review, Board staff revised the language to ensure the Board had the authority to implement.

Ms. Powell added that the initial language would have raised a concern with the Office of Administrative Law.

Judge Duvaras spoke in support of the motion.

MOTION: DR. LUBKIN MOVED THAT THE BOARD ADOPT THE REVISED LANGUAGE FOR THE LETTER OF ADMONISHMENT AS AN ADDITIONAL ENFORCEMENT TOOL.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 5-0

MOTION CARRIED.

Board Meeting Schedule for 2008

Mr. Stiger reported that Board Member concerns have been raised about conducting two-day Board Meetings and that the schedule should be reviewed. Mr. Stiger also mentioned that SCUHS invited the Board to hold its next meeting at the campus in Whittier.

Dr. Lerner commented that the Board needs to conduct a couple of two-day meetings to alleviate the backlog of petitioner hearings.

Dr. Tyler suggested that we have monthly one day meetings rather than two-day meetings to save expenses.

Dr. Lubkin offered that he has cut his practice by half to complete Board business and suggested more frequent meetings.

Dr. Columbu proposed more one day meetings.

Mr. Conran built his schedule around previously adopted Board meetings and his schedule does not provide a lot of elasticity.

Dr. Lerner stated that having monthly one day meetings is the same as having two day meetings every two months.

Mr. Stiger clarified that the schedule is to have only two meetings that cover two days.

Ms. Powell said that Boards typically meeting no more than five times in a year and she would not be able to meet monthly due to her schedule.

Ms. Powell also suggested that meeting at a chiropractic school may give the wrong impression.

Ms. Powell recommended that the Board agendaize a discussion on delegating petitioner hearings to the Attorney General's Office.

Mr. Conran stated that the Board move meetings throughout the state to give the opportunity for the public to attend and Mr. Conran supports meeting at chiropractic schools.

Judge Duvaras opposes keeping the schedule the same and recommends that petitioner hearings be held in Sacramento.

Dr. Lubkin stated that the decision made to conduct two-day meetings was made during the board's reduced budget and he is opposed to two-day meetings.

MOTION: DR. TYLER MOVED THAT THE SCHEDULE REMAIN THE SAME FOR THE REMAINDER OF THE YEAR.

SECONDED: MR. CONRAN SECONDED THE MOTION.

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

MOTION: JUDGE DUVARAS MOVED TO RESTRUCTURE THE BOARD MEETINGS TO ELIMINATE TWO-DAY MEETINGS.

SECONDED: DR. COLUMBU SECONDED THE MOTION

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

Dr. Lerner reported that the Board was invited to SCHUS for a future Board meeting.

MOTION: DR. LUBKIN MOVED THAT THE BOARD HOLD A FUTURE MEETING AT SCHUS.

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

PUBLIC COMMENT

Dr. Charles Davis suggested that the Board hold more public meetings in Southern California.

Dr. Lerner proposed to move the San Diego meeting to Burbank.

Future Agenda Items

Mr. Conran would like to invite deans from Chiropractic Colleges to update the full Board on their curriculums and other matters.

Dr. Keith Henry, Cleveland Chiropractic College, announced that he will be attending Board meetings on a regular basis.

ADJOURN TO CLOSED SESSION

Dr. Lerner adjourned the meeting to closed session.

OPEN SESSION

Dr. Lerner opened the session and announced that the Board discussed two disciplinary matters.

ADJOURNMENT OF PUBLIC SESSION

Dr. Lerner adjourned the public session at 2:42.

Board of Chiropractic Examiners

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CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****July 30-31, 2008**

**Southern California University of Health Science
1600 E. Amber Valley Dr.
Building M, Room 41
Whittier, CA 90604**

Board Members Present

Frederick Lerner, DC. Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst
Lavella Mathews, Associate Governmental Program Analyst
Valerie James, Office Technician
John Melendez, Licensing and Continuing Education Manager
Sandra Walker, Compliance Manager
April Alameda, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 11:10 a.m.

Roll Call

Dr. Columbu called the roll. All members were present with the exception of Judge James Duvaras (Ret.) Public Member, who was absent.

Chair's Report

Dr. Lerner welcomed the students and faculty of Southern Californian University of Health Sciences (SCUHS) to the Board Meeting. Dr. Lerner expressed being honored as an SCUHS alumnus and voiced his gratitude to Debra Mattos, Dr. Meadows, Dr. Craft and the University staff for making this possible today. Dr. Lerner introduced the Board members and staff. Dr. Lerner explained how the Board works for educational purposes.

Approval of Minutes

Dr. Lerner tabled the approval of the May 22, 2008, minutes until the September meeting.

DR. COLUMBU MOVED TO AMEND THE AUGUST 16, 2007, MINUTES TO ADD JULIE DEANGELO FELLMETH'S OFFER TO ASSIST THE BOARD IMPROVE ITS ENFORCEMENT PROCESSES. DR. LUBKIN SECONDED THE MOTION; VOTE: 5-0; MOTION CARRIED.

Board Member Training on the Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell announced that the Department of Consumer Affairs is having a consumer conference in November, which will include Board Member training on the Bagley-Keene Open Meetings Act.

Dr. Tyler would like to see a policy in place that some designated Board member would prepare questions to have for Ms. Powell.

Dr. Lerner would like to leave Bagley-Keene on the agenda for future Board members that will come on Board.

Jim Conran would like to leave on the agenda to be a constant reminder to stay in compliance.

Executive Officer's Report

Budget:

Mr. Stiger provided a status of the budget. He reported that the Board will revert money back into the fund to be utilized for future services.

Mr. Stiger commented that the budget will be very tight this year and noted the need to manage appropriately as the office will be fully staffed. He also stated there are a number of projected expenditures that are going to be expensive and assured the Board that the budget will be managed appropriately.

Personnel:

Mr. Stiger provided a progress report on the vacant positions.

He updated the Board on the status of filling the Supervising Special Investigator and Investigator positions. Interviews for the Supervising Investigator have been conducted and we have potential candidates. Background checks on the candidates are in process.

Mr. Stiger stated that the Board's goal was to be fully staffed by July 1, 2008. We nearly achieved that goal.

Licensing Report:

Mr. Stiger informed the Board presented the licensing report.

Mr. Stiger informed the Board that the number of licensed chiropractors increased by 36 over last year, satellite certificates increased by 160, corporations increased by 35 and referrals remained about the same. Over all, we have 230 more licensees than the previous fiscal year.

Dr. Lubkin requested Board staff to present information on licensees that hold more than five registered satellite offices.

In response, Mr. Stiger informed the Board that it would be a difficult manual process, but could be accomplished if the Board wanted the information.

Enforcement

Mr. Stiger presented the enforcement report which included a 3 year comparison.

Mr. Stiger reported having eight hundred pending complaints but noted that this does not mean that all pending complaints are in back log.

Mr. Stiger informed the Board that staff is working diligently to eliminate the back log and consolidating resources to accomplish the task.

Mr. Stiger asked the Board members for their feedback on the new format of reports.

Mr. Conran replied the report format was simple and easy to read. He commented that once the Cite and Fine process is functioning, he would like to know the number of fines being assessed for the associated infractions.

Dr. Lubkin requested a color break down chart of the License Reports. He noted it would be beneficial for continuing education providers to be updated as to the source of the majority of complaints in order to improve and develop continuing education programs by specifically addressing complaint issues.

Committee Reports

Public Relations Committee

Dr. Lerner informed the Board the committee was attempting to determine who to contract with for the development of public relation materials.

Dr. Lerner asked that the Board members be aware that the state prefers using its own agencies, and to deter from that preference would cause delays. Conversely, he noted that an outside source may provide a higher level of creativity.

Mr. Stiger informed the Board members of the requirements for initiating a State contract with a private entity noting the process would take approximately 190 days.

Mr. Conran recommended that the Board use a state agency, so that we could address the needs of the public more promptly. Mr. Stiger stated that DCA would be our source to development public materials.

Mr. Conran indicated another possible provider would be the Department of General Services.

Dr. Tyler asked about the scope of the public relations endeavors. Dr. Lerner identified four products, a newsletter, as well as a brochure, a Board seal, and press releases.

MR. CONRAN MOTIONED FOR THE BOARD TO DIRECT THE EXECUTIVE OFFICER TO PROCEED IN FINALIZING A CONTRACT WITH THE STATE AGENCY TO PROVIDE SERVICES. THE MOTION FAILED.

Mr. Stiger commented that a public relations program is an integral part of the enforcement program and noted that the choice before the Board was whether to contract with an outside vendor or a state agency.

Dr. Tyler asked about the financial impact of outside vendor versus a state agency.

Dr. Columbu recommended considering a short term contract.

Dr. Lubkin requested public relations presentations be provided in the future, but agreed that the Board should move forward with DCA in the interim.

DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH A ONE YEAR CONTRACT WITH THE DEPARTMENT OF CONSUMER AFFAIRS WITH THE PROVISION THAT THE CONTRACT BE REVIEWED IN THE FUTURE IN ORDER TO DETERMINE WHETHER THE CONTRACT WOULD BE RENEWED. MR. CONRAN SECONDED THE MOTION WITH AN AMENDMENT FOR THE INCLUSION OF OTHER GOVERNMENT AGENCIES IN ADDITION TO THE DEPARTMENT OF CONSUMER AFFAIRS. DR. LUBKIN ACCEPTED THE AMENDMENT. VOTE: 5-0. MOTION CARRIED.

Licensing Committee

Dr. Tyler presented the committee report due the absence of Judge Duvaras.

Mr. Stiger presented the list of previously approved licensees along with approval dates to the Board to ratify the approvals.

DR. LUBKIN MOTIONED FOR APPROVAL BY RATIFICATION WHICH CONSISTS OF A LIST OF LICENSEES. MR. CONRAN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Dr. Tyler suggested that the Board observe the qualifications of the individual as well as the institution that they come from with regard to license reciprocity with other states.

Mr. Stiger informed the Board that all licensees applying for reciprocity must meet the requirements of the Board.

Dr. Tyler expressed concerns about public safety. Ms. Powell acknowledged Dr. Tyler's concerns relative to scope of practice and concerns about chiropractic college curriculums.

Dr. Lubkin advised that other States require that applicants from other states complete coursework in order to meet their educational requirements.

Mr. Stiger advised that the issue before the Board is whether or not the document provided would be accepted by the Board as meeting the requirements of Section Nine of the Act along with meeting all other requirements. He inquired whether the letter, as submitted, met the requirement.

DR. LUBKIN MOTIONED THAT THE BOARD BE ALLOWED TO EXPECT ENDORSEMENTS OF RECIPROCITY FROM OTHER STATES AND HAVE THAT MEET THE CRITERIA SET FORTH IN SECTION NINE OF THE INITIATIVE ACT. VOTE 5-0 MOTION CARRIED.

Mr. Conran requested clarification on the standards for reciprocity.

Public Comment

Mr. Keith Henry, Clinic Director of Cleveland Chiropractic College, added to the discussion the issue that other states exams do not have part four.

Dr. Tyler informed the Board the possibility of recognizing Chiropractic Assistant needs to be addressed by the Board. Dr. Lerner expressed his concerns regarding public safety and stated that he believes it prudent that the Board set standards for Chiropractic Assistants.

The Licensing Committee was directed to research other Boards for standards.

Ms. Powell advised that the issue is whether the Board can issue another license/certify under the Initiative Act. Ms. Powell informed the Board that they could start by changing Section 312 of the regulations in regards to Chiropractic Assistants.

Dr. Lerner directed the licensing committee to research training requirements of chiropractic assistants.

Dr. Tyler informed the Board of the future increase of license fees. Mr. Stiger informed the Board of the current budget status but commented that 2011/2012 there will be a need to have the license fees increased.

Continuing Education Committee

Dr. Tyler asked Mr. Stiger to provide an update regarding the continuing education work group. Mr. Stiger informed of the formation of a work group from within the profession including Dr. William Updyke, Erik Banta, Dr. Kyndra Hallway, Dr. Lou Ringler, Dr. Linda Shanks, Dr. Mitchell Peritz, Dr. J. Ray Welch and Carlye R. Brakensiek, who are providing valued input in the revision of existing CE regulations. Additionally, Board staff members John Melendez, Licensing and Continuing Education Manager, Licensing Analyst Genie Mitsuahara and Executive Officer, Brian Stiger are participating in the work group.

The goal is to present revised language to the Board at the September meeting.

Dr. Tyler expressed concern that the Board Members are not actively involved in the course review and approval process. He would like to make sure that the continuing education committee meets with Board staff relative to the approval continuing education courses; not providers.

Mr. Stiger informed the Board that approval by ratification will be a standing agenda item.

Scope of Practice Committee

Dr. Lubkin reported that the Scope of Practice committee meeting had voted to have the document submitted by David Prescott, Attorney sent to the Secretary of State for either the authentication or rejection.

Ms. Powell expressed her concern that someone might read the document submitted by David Prescott and mistake it for current law. The document does not establish the scope of practice and it is not current law.

Dr. Lerner expressed that the Board should submit document to the Secretary of State for their records.

DR. LERNER MOTIONED TO AMEND THE COMMITTEES DIRECTIVE TO SEND THE DOCUMENT SUBMITTED BY DAVID PRESCOTT TO THE OFFICE OF THE SECRETARY OF STATE FOR INFORMATION PURPOSES ONLY. DR. TYLER SECONDED THE MOTION. VOTE 4-1 MR CONRAN ABSTAINED.

Dr. Lubkin advised that the Chiropractic Scope of Practice for X-ray to the Board is waiting for a legal opinion from Department of Consumer Affairs.

Dr. Lubkin reported that the Scope of Practice Committee is waiting for staff to provide a list of various chiropractic Specialties approved programs.

Mr. Stiger clarified that the Board agreed to move forward with the regulatory language to recognize Chiropractic Specialties.

Government Relations Committee

Mr. Conran reported that the committee met with three issues addressed. The first issue was Board member use for state issued to email accounts. The Board has agreed to this with the caveat that training on how to use and retrieve email be provided.

Mr. Stiger provided a draft instruction to the Dr. Lerner to access his email.

Mr. Conran advised the Board members that in the event they receive a questionable email from the public, they should discontinue reading the email and forward it to Mr. Stiger for review.

Mr. Conran stated that the Board meeting minutes were meeting the needs of the public in current format.

Mr. Conran requested that the staff come back with a recommendation in regards to revision of the Chiropractic Consultant Classification within six months.

Mr. Conran would like to have a procedure in place in how to discard documents. This would be a future agenda at next Government Relations Committee meeting.

Public Comment

An unidentified member of the public opined that there were not enough of public comments included in the minutes.

Legislative Committee

Dr. Lerner informed to the Board legislative committee recommended that the Board take an opposed position to Senate Bill 963.

**DR. COLUMBU MOVED TO OPPOSE SB 963; DR. TYLER SECONDED THE MOTION;
VOTE 4-1; MOTION CARRIED.**

Mr. Conran spoke in opposition to the motion and expressed the value of reporting ex-parte communication to the public.

Dr. Lerner explained that the Legislative Committee reviewed the latest amendments to SB 1402 and the Committee recommended that the Board retain its current position of "Support if Amended."

An unidentified member of the public requested clarification on Bill 1402 about requirements of a licensee's reporting convictions to the Board.

Ms. Powell stated that the Board does not want licensees deciding that their conviction wasn't substantially related to the practice of Chiropractic.

Dr. Lerner adjourned the meeting for a lunch break at 12:05 p.m.

Dr. Lerner reconvened the public meeting at 1:35 p.m. Board members were present with the exception of Judge James Duvaras (Ret.) Public Member.

Hearings re: Petition for Early Termination of Probation

Administrative Law Judge Samuel De Reyes presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Anthony Loc Boa Nguyen
- Thomas Nutting
- Kwang E. Kim declined his hearing.

CLOSED SESSION:

Public Session: Announcements re: Closed Session

Dr. Lerner announced that the Board deliberated on the two petitions for early termination and evaluated the Executive Officer's work performance.

Meeting Adjourned

Dr. Lerner adjourned the public meeting for the evening.

Thursday, July 31, 2008

Public Session:

Dr. Lerner reconvened the public session at to order 8:22 am

Roll

Dr. Columbu called roll all Board members present, with the exception of Jim Conran and Judge James Duvaras who were both absent.

CLOSED SESSION:

Public Session: Announcement re: Closes Session

Dr. Lerner announced that the Board deliberated on the disciplinary matter regarding Aster Kifle-Thompson.

Hearings re: Petition for Early Termination of Probation

Administrative Law Mr. Sawyer presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Adam Kleinberg
- Asghar Ebadat
- James Slusher
- James Dresser
- Paul Kobulnicky
- Olatungie Fergusson
- Joseph Scannell

Closed Session:

Public Session: Announcement re: Closed Session

Dr. Lerner called the Board to open session at 4:10 p.m. and announced that the deliberated on the seven petitions for early termination of probation.

Adjournment

Dr. Lerner adjourned the public meeting at 4:30 p.m.

FUND NO. 0152

Expense Index

**BOARD OF CHIROPRACTIC EXAMINERS
BUDGET REPORT
EXPENDITURE PROJECTION**

September 15, 2008

MONTH 3

Mos. Remaining: 9

OBJECT DESCRIPTION	FY 2006-07	FY 2007-08	FY 2008-09		
	ACTUAL EXPENDITURES	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONAL SERVICES:					
Salaries and Wages					
Civil Service-Perm	697,255	411,012	926,393	825,876	100,517
Temp Help (907)	0	4,861	0	53,760	(53,760)
Statutory-Exempt (EO)	0	92,243	80,328	83,904	(3,576)
Board/Commission (910,920)	8,600	4,300	16,000	9,000	7,000
Overtime (909)	0	3,512	4,615	4,000	615
Staff Benefits	263,773	208,524	389,158	290,059	99,099
Salary Savings	0	0	(1,219)	0	(1,219)
TOTAL, PERSONAL SVC	969,628	724,452	1,415,275	1,266,599	148,676
OPERATING EXPENSE AND EQUIPMENT:					
General Expense	31,149	12,638	52,000	32,000	20,000
Printing	3,103	4,495	7,331	5,000	2,331
Communication	26,688	18,697	61,136	28,000	33,136
Postage	2,821	21,284	11,662	20,000	(8,338)
Travel In State	17,403	12,792	21,241	20,000	1,241
Travel, Out-of-State	6,803	2,708	24,121	8,000	16,121
Training	5,235	863	13,331	10,000	3,331
Facilities Operations	111,579	109,487	140,754	110,000	30,754
C & P Services - Interdept.	1,068,744	179,027	57,384	100,000	(42,616)
C & P Services - External	175,843	417,461	124,513	250,000	(125,487)
DP Billing (OIS) Prorata	0	0	6,936	6,936	0
Consolidated Data Center	26,800	26,800	25,985	27,000	(1,015)
Interagency Agreement IT	183,067	70,000	51,723	70,000	(18,277)
NOC Serv IT (Security)	0	49,500	63,881	50,000	13,881
IT Consultant	0	0	54,136	50,000	4,136
DP Supplies	0	1,217	0	0	0
Central Admin Pro Rata	92,361	0	126,458	126,458	0
Administrative External Svcs	0	178	0	0	0
Major Equipment	0	97,530	85,000	50,000	35,000
Minor Equipment	0	0	50,000	50,000	0
Vehicle Operations	0	0	6,000	17,000	(11,000)
ENFORCEMENT:					
Attorney General	0	342,327	941,000	941,000	0
Attorney General Fingerprinting	0	5,128	10,000	5,000	5,000
Office Admin. Hearing	0	48,411	217,379	217,379	0
Evidence / Witness Fees	0	17,168	75,000	75,000	0
Consultant Investigations	0	120,000	40,754	0	40,754
Div. of Investigations	0	0	0	0	0
Special Adjustments	0	0	0	0	0
TOTALS, OE&E:	1,751,597	1,557,712	2,267,725	2,268,773	(1,048)
TOTAL EXPENSE:	2,721,225	2,282,163	3,683,000	3,535,372	147,628
Sched. Reimb. - Other	0	(4,312)	(33,000)	(5,000)	(28,000)
Sched. Reimb. - Fingerprints	0	0	(11,000)	0	(11,000)
Unsched. Reimb.	0	0	0	0	0
TOTAL REIMBURSEMENTS:	0	(4,312)	(44,000)	(5,000)	(39,000)
NET APPROPRIATION:	2,721,225	2,277,851	3,639,000	3,525,372	108,628
					2.99%

**Recruitment and Selection of Vacant Position Update
September 17, 2008**

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Office Technician Policy / Admin	07/03/08	In Process	In Process			
Sup. Spec. Investigator I Field Op. Manager	05/27/08	complete	Complete	Complete	9/15/08	10/01/08
Spec. Investigator (Northern California)	07/10/08	Complete	Complete	Complete	9/15/08	10/01/08
Spec. Investigator (Southern California)	07/10/08	In Process	In process			

**BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA**

FY 2007/08 – FY 2008/09 COMPARISON

LICENSE TYPE	TOTAL LICENSES 8/30/2007	TOTAL LICENSES 8/30/2008	NET VARIANCE
CHIROPRACTORS	13812	13843	+31
SATELLITES	2230	2436	+206
CORPORATIONS	1305	1346	+41
REFERRALS	17	17	0
TOTALS	17364	17642	+278

JULY 1, 2008 – AUGUST 30, 2008

LICENSE TYPE	FORFEITED LICENSES	CANCELLED LICENSES	INACTIVE LICENSES	TOTAL
CHIROPRACTORS	-31	101	19	89
SATELLITES	41	61	N/A	102
CORPORATIONS	4	3	N/A	7
REFERRALS	0	0	N/A	0
TOTALS	14	165	19	198

Definitions:

Forfeiture: Occurs due to failure to renew license within 60 days of license expiration.

Cancellation: Occurs voluntarily or results from failure to renew a license within three years of forfeiture.

Compliance Unit Statistics

Fiscal Year	05/06	06/07	07/08	08/09*
<u>Complaints</u>				
Received	764	702	665	89
Pending	834	729	799	744
Closed with Insufficient Evidence	116	131	106	26
Closed with No Violation	96	60	78	33
Closed with Merit	319	200	321	36
Citations and Fines Issued (Total Fine Amount)	36	34	28	1 (\$100)

Accusations

Filed	45	41	14	3
Revoked	16	27	8	0
Revoked, Stayed, Probation	31	37	20	1
Voluntary Surrender of License	8	4	3	0
Dismissed/Withdrawn	0	3	4	1

Statement of Issues

Filed	4	11	7	0
Denied	0	0	0	0
Probationary License	8	6	6	0
Withdrawn at Applicants Request	0	2	1	0
Granted	7	3	0	0

Probation Cases

Active	188	173	159	158
--------	-----	-----	-----	-----

* FY 08/09: July 1, 2008 - August 31, 2008

Updated: September 2, 2008

FISCAL YEAR 2007

July 1, 2006 - June 30, 2007
 Total Number of Complaints Opened - 702
 Total Number of Violations - 1129
 (A complaint may contain multiple violations)
 Revised August 2008*



FISCAL YEAR 2008

July 1, 2007 - June 30, 2008

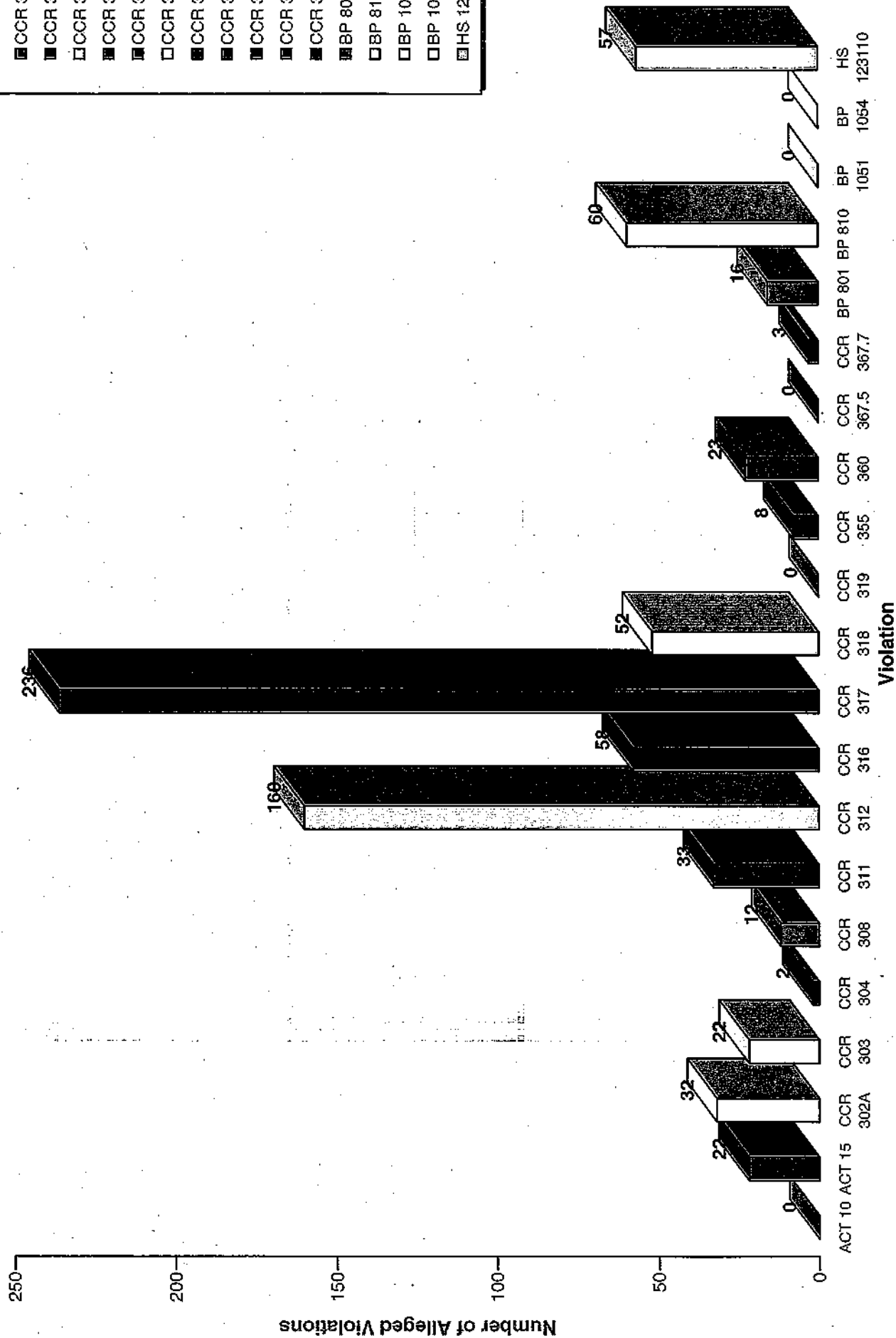
Total Number of Complaints Opened - 665

Total Number of Violations - 796

(A complaint may contain multiple violations)

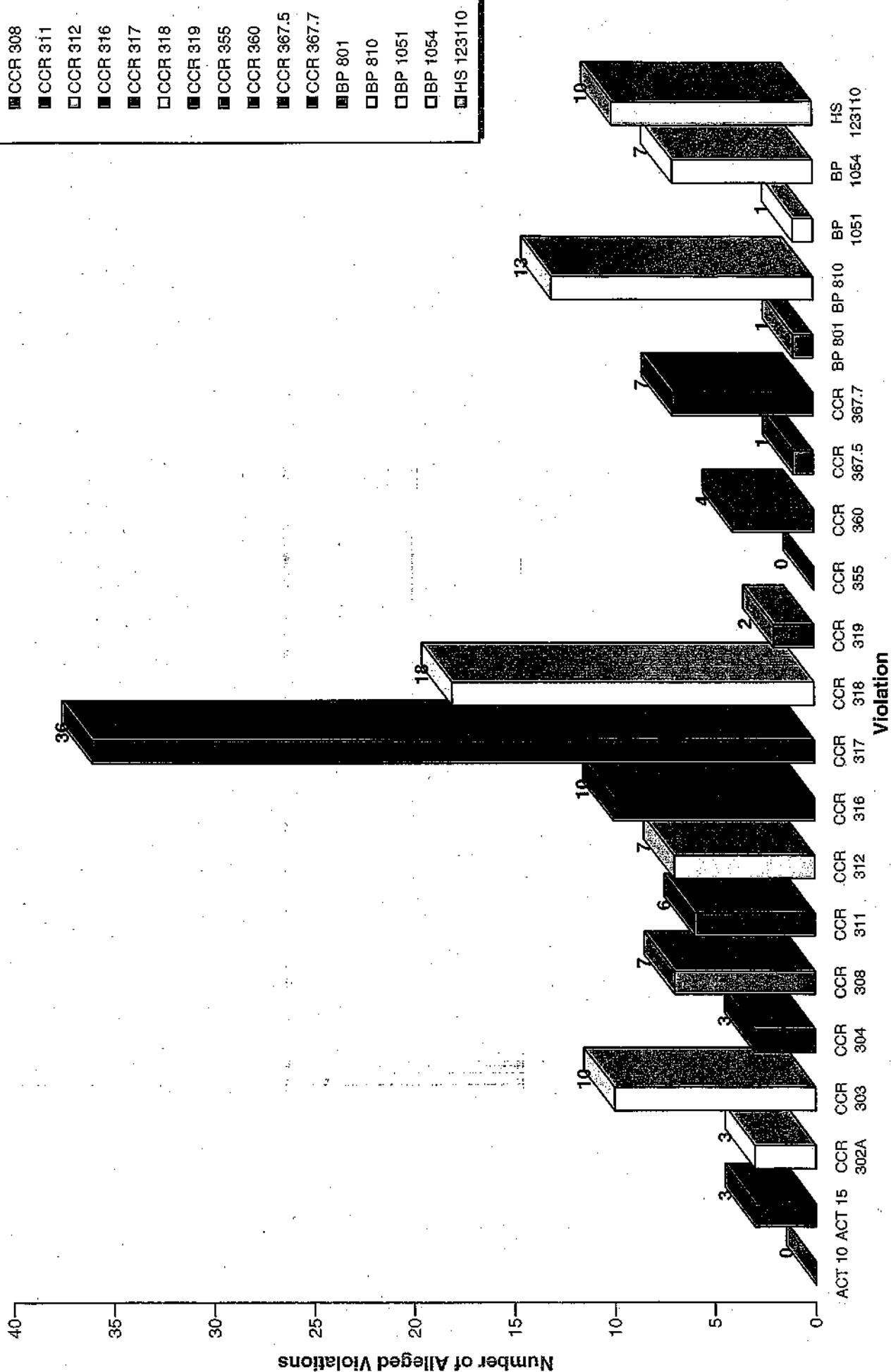
Revised August 2008*

- ACT 10
- ACT 15
- CCR 302A
- CCR 303
- CCR 304
- CCR 308
- CCR 311
- CCR 312
- CCR 316
- CCR 317
- CCR 318
- CCR 319
- CCR 355
- CCR 360
- CCR 367.5
- CCR 367.7
- BP 801
- BP 810
- BP 1051
- BP 1054
- HS 123110



FISCAL YEAR 2009


July 1, 2008 - August 31, 2008
 Total Number of Complaints Opened - 89
 Total Number of Violations - 149
 (A complaint may contain multiple violations)



MEMORANDUM

Date: September 24, 2008

To: Board Members

From: 
Brian J. Stiger,
Executive Officer

Subject: Ratification of Formerly Approved Continuing Education Providers

This is to request that the Board ratify the following list of continuing education providers at the September 24-25, public meeting.

Staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

<u>CONTINUING EDUCATION PROVIDERS</u>	<u>DATE APPROVED</u>
<u>1. Mueller College of Holistic Studies</u>	<u>08/08/08</u>
<u>2. The Upledger Institute, Inc.</u>	<u>08/14/08</u>

If you have any questions or concerns, please contact me at your earliest opportunity.

MEMORANDUM



Date: September 17, 2008

To: Board Members

From: 
Brian J. Stiger
Executive Officer

Subject: Ratification of Formerly Approved Doctors of Chiropractic for Licensure

This is to request that the Board ratify the attached list of individuals as Doctors of Chiropractic at the September 24-25, 2008, public meeting.

Between July 23, 2008 and September 16, 2008, staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

If you have any questions or concerns, please contact me at your earliest opportunity.

Approval By Ratification of Formerly Approved License Applications
July 23, 2008 – September 16, 2008

Name (First, Middle, Last)			Date Issued	DC#
Ronald	McCormick	French	8/20/2008	30982
Adam	Michael	Atkinson	8/20/2008	30983
Kendra	Suzanne	Beal	8/20/2008	30984
Matthew	David	Bernstein	8/20/2008	30985
Tammy	Kay	Cassa	8/20/2008	30986
Matthew	Nicholas	Chang	8/20/2008	30987
Michael	Jonathan	Day	8/20/2008	30988
Thomas	Craig	Gibson	8/20/2008	30989
Brandon	William	Haskins	8/20/2008	30990
Ranjeeta		Lal	8/20/2008	30991
Joel	Adiv	Levitz	8/20/2008	30992
Megan	Leigh	Moon	8/20/2008	30993
Todd	Benjamin	Plutchok	8/20/2008	30994
Roger		Seto	8/20/2008	30995
Kyle	Hitoshi	Taketa	8/20/2008	30996
Richard	Jason	Veirs	8/20/2008	30997
Eric	Joseph	Walker	8/20/2008	30998
Jinmo		Yoon	8/20/2008	30999
Rhonda	E	Basarich	9/3/2008	31000
Maria Anna	Shaner Sumayao	Bongalon	9/3/2008	31001
Michelle	Aline	Caplan	9/3/2008	31002
Selena		Cermeno	9/3/2008	31003
Jack	Charles	Hewitt	9/3/2008	31004
Takehisa		Horii	9/3/2008	31005
Jerry		Lee	9/3/2008	31006
Jossue		Ortiz	9/3/2008	31007
Lawson	Victor	Sealey	9/3/2008	31008
Manuel		Urteaga	9/3/2008	31009
Matthew	Justin	Valusek	9/3/2008	31010
Sean	Michael	Zarzana	9/3/2008	31011
Venessa	Carmita	Bartholomew	9/5/2008	31012
Christopher	Wayne	Berry	9/5/2008	31013
Kaisa		Bidali	9/5/2008	31014
Dana	Rachelle	Carlucci	9/5/2008	31015
Benedict	Young II	Choi	9/5/2008	31016
Ronald	Leon	Evans	9/5/2008	31017

Petra	Alexandra	Gill	9/5/2008	31018
Adam	Jonathan	Jacobs	9/5/2008	31019
Ashkan		Khodabakhsh	9/5/2008	31020
Shahid	Zaheer	Lateef	9/5/2008	31021
Jennifer	Mihoko	Ota	9/5/2008	31022
Trevis	Tyree	Rawlinson	9/5/2008	31023
Richard	J.	Rojas	9/5/2008	31024
Heather		Shott	9/5/2008	31025
Noushin		Sorkhiz	9/5/2008	31026
Michael	Yu Long	Sun	9/5/2008	31027
Trent	Jacob	Teegarden	9/5/2008	31028
Howard	Scott	Vance	9/5/2008	31029
Erica	Denise	Witter	9/5/2008	31030

SECTION 139 REPORT

EXAMINATION PROGRAM			PREREQUISITES ¹ for admittance to the examination			EXAMINATION VALIDATION ² Occupational Analysis (OA) Examination Development (ED)				COSTS (in Thousands) ³ per occurrence (po) or per year (py)		
License Type(s)	Exam Title(s)	Mandating Code	Assessment		Most Recent OA	ED Linked to OA	Passing Score Method	Ongoing Item Analysis	OA (po)	ED (po)	Testing (py)	Program Evaluation (po)
			B&P	CCR								
Chiropractic Examiners, Board of	Clinical/Practical (Written)	Chiropractic Initiative Act of California Section 5	OA: Internal/external review		2005		Modified Angoff, equating		n/a	n/a	n/a	n/a
	Chiropractic Law and Professional Practice Examination	Chiropractic Initiative Act of California Section 6			2004		Angoff					

Dean J. Stan
Signature of Executive Officer
9/8/2008
Date

Comments:

FAX SIGNED FORM TO OER AT (916) 575-7291

¹ Prerequisites for admittance to the examination are mandated; and assessed using a number of methods, including valid occupational analyses (OA), national standards, and regulatory review. CCR codes are Title 16 unless otherwise indicated.
² Methods used to establish passing scores vary across exam administrations, and are based on minimum competence criteria necessary for licensure.
³ Included are costs for personnel required to perform these functions.

STEPHEN B. GORMAN
OF COUNSEL

PETER J. KOZAK
TRIAL COUNSEL

GORMAN & KOZAK, LLP
ATTORNEYS AT LAW
1010 CAMERADO DRIVE, SUITE 101
CAMERON PARK, CA 95682-7984

TAX ID 41-2165581
(530) 677-6000 / FAX (530) 677-9893

DOUGLAS E. STEIN
SPECIAL COUNSEL

MATTHEW D. ENGBERTSON
ASSOCIATE COUNSEL

June 27, 2006

VIA US MAIL AND FAX

Board of Chiropractic Examiners
2525 Natomas Park Dr., Ste. 260
Sacramento, CA 95833-2931
Fax: 916-263-5355

Re: Board meeting of July 20, 2006

Dear Gentlepersons:

I am writing on behalf of my client, Rodney Schell, D.C. Dr. Schell has been licensed as a chiropractor in the State of California for many years. He has also been licensed as a X-Ray Supervisor and Operator by the California Department of Health Services. Until recently he was employed by Community Mobile Diagnostics to supervise and operate x-ray machines. After receiving a "NOTICE OF VIOLATION" from Ephraim Maura of the Inspection, Compliance and Enforcement Section, Radiologic Health Branch, Richmond Regional Office of the Department of Health Services, Dr. Schell's employer terminated his services. Upon investigation we discovered that the "violation" that Mr. Maura complained of was simply that Dr. Schell was a chiropractor. I have attached copies of the notice of violation and Community Mobile Diagnostic's response for your review.

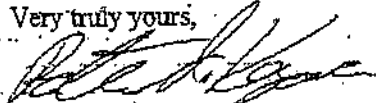
Under §302(a)(6) of Title 16 of the regulations of the California Board of Chiropractic Examiners, as a licensed chiropractor Dr. Schell is licensed to use x-ray equipment for diagnostic purposes. The scope of Dr. Schell's work with Community Mobile Diagnostics was entirely diagnostic; none of the procedures he did were "treatment". It would seem that Mr. Maura's contention is that as a chiropractor he did not meet the requirement established by California Health and Safety Code §107110, specifically that anyone operating an x-ray machine be certified by a recognized examining board in radiology. Dr. Schell's license was valid for diagnostic work, and he did not exceed the scope of that license.

I believe that a short Letter of Opinion from the Board to Mr. Maura and his Department supervisor would be invaluable in clarifying this issue. On Dr. Schell's behalf, I respectfully request that the Board place this matter on the agenda for the next Board of Chiropractic Examiners meeting scheduled to be held July 20, 2006. Dr. Schell plans to attend that meeting and he will be pleased to provide whatever information you may need to resolve this issue.

Board of Chiropractic Examiners
June 27, 2006
Page 2

I appreciate your assistance in this matter. Should you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Peter Kozak
Attorney at Law

PJK:ap

bcc: Rodney Schell, D.C.
(fax) 916-990-0131

Proposed Regulatory Language for MUA

Section 318.1 is hereby added to Title 16, Division 4, Article 2 of the California Code of Regulations:

318.1 Standard of Care re Manipulation Under Anesthesia ("MUA")

(a) MUA may only be performed in a hospital or ambulatory surgery center licensed by the California Department of Public Health, Bureau of Hospital Licensing and Certification and approved by either the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Accreditation Association of Ambulatory Health Care, or Medicare.

(b) Anesthesia may only be administered by a California licensed physician and surgeon, or other health care provider authorized under California law to administer anesthesia. The chiropractor may not direct, instruct, interfere, or make any orders to the physician and surgeon, or other health care provider who is administering and maintaining the anesthesia.

(c) MUA shall be performed by two chiropractors trained and competent to safely perform MUA. The "primary chiropractor" shall formulate the chiropractic portion of the MUA treatment plan and shall be responsible for performing the chiropractic manipulation for that procedure. The "second chiropractor" shall insure that all movements are accomplished with patient care and safety as his or her primary focus and shall assist the "primary chiropractor" when necessary. The chiropractic portion of MUA is limited to techniques within the scope of practice of a chiropractor.

(d) For the purpose of this section, the primary chiropractor and the second chiropractor may not be involved in nor interfere with the physician and surgeon or other health care provider in the discharge of the patient following the MUA procedure.

(e) Failure to follow the standard of care contained in this section when performing MUA shall constitute unprofessional conduct.

(f) "MUA" means the manipulation of a patient who is sedated by the administration of anesthesia by a physician and surgeon or other health care provider who is legally authorized to administer anesthesia. "Manipulation" means the manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord.

**Board of Chiropractic Examiners
Proposed Regulations
Title 16, Division 4, California Code of Regulations**

§ 389. Letter of Admonishment.

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated and may contain an order of abatement.
- (c) The letter of admonishment shall be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.
- (d) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
 - (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
 - (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference. Upon request and approval by the Executive Officer or his or her designee, the licensee may participate in the office conference by telephone.
 - (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
 - (C) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
 - (2) Comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****September 24 – 25, 2008****10:00 a.m.****State Capitol****Assembly Room 126****Sacramento, CA 95814****Wednesday, September 24, 2008****10:00 a.m****AGENDA**

1. PUBLIC SESSION Call to Order

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Richard Tyler, D.C., Professional Member

2. Chair's Report**3. Approval of Minutes**

- A. May 22, 2008, Public Session
- B. July 30 – 31, 2008, Public Session

4. Public Comment**5. Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****6. Executive Officer's Report**

- A. Budget
- B. Personnel
- C. Licensing
- D. Enforcement
- E. Bureau of State Audits

7. Committee Reports

- A. Continuing Education Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved Continuing Education Providers
 - Update on the Continuing Education Work Group's Proposed Regulations
- B. Licensing Committee - Discussion and Possible Action
 - Approval by Ratification of Formerly Approved License Applications
 - Update on the Chiropractic Law and Professional Practice Examination
- C. Scope of Practice Committee - Discussion and Possible Action
 - Recognition of Chiropractic Specialties re Advertising
 - Chiropractic Scope of Practice for X-ray
 - Manipulation Under Anesthesia Revised Proposed Regulatory Language
- D. Public Relations Committee - Discussion and Possible Action

REGULATIONS UPDATE – Discussion and Possible Action

- Letter of Admonishment

8. Public Comment

9. Future Agenda Items

10. Hearings re: Petition for Reinstatement of Revoked License

- Craig Maurer
- Robert Strohbach

11. CLOSED SESSION:

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions
Pursuant to California Government Code Section 11126(c)(3)

12. PUBLIC SESSION: Announcements re Closed Session

Thursday, September 25, 2008
8:00 a.m.

13. CLOSED SESSION

A. Pursuant to California Government Code Section 11126(e)

- Catherine Hayes v. Board of Chiropractic Examiners
Sacramento County Superior Court Case No. 07AS03721
- David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes
Sacramento County Superior Court, Case No. 07AS03721

14. PUBLIC SESSION: Call to Order

- Announcements Re Closed Session

15. Hearings re: Petition for Reinstatement of Revoked License

- Stanford Sher
- Parviz Kovoossi
- Paul Bologna
- Carlos Seals

16. Hearings re: Petition for Early Termination of Probation

- Lee Tan Nguyen
- Steve Ram Nadkeswhar
- Donald Ringer

17. CLOSED SESSION:

18. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)

19. PUBLIC SESSION Announcements re Closed Session

20. Adjournment

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Administrative Committee** of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the MUA Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**Call to Order****Discussion and Possible Action**

- Interagency Agreement with Department of Consumer Affairs (DCA)

Discussion and Possible Action

- State Issued E-mail Addresses for Board Members

Discussion and Possible Action

- Board Member Administrative Procedure Manual Updates

Discussion

- Investigator Contracts

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ADMINISTRATIVE COMMITTEE**

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ADMINISTRATIVE COMMITTEE**

Jim Conran, Chair

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Hugh Lubkin, D.C.

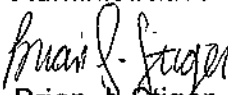
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State of California

MEMORANDUM

To: Administrative Committee

From: 
Brian J. Stiger
Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Date: March 20, 2008

Telephone: (916) 263-5359

Subject: **Interagency Agreement with DCA for FY 07/08 – 08/09**

The Board of Chiropractic Examiners' (BCE) current contract with the Department of Consumer Affairs (DCA) for administrative services is scheduled to terminate on June 30, 2008. These services include legal, fiscal, and personnel.

This requests your support to enter into a two-year contract with DCA beginning July 1, 2008, through June 30, 2010, for administrative support services. The new contract will expand from the current services to include public affairs and possibly information technology services.

I have entered into negotiations with the DCA on a new contract. I anticipate the annual cost of this contract at approximately \$220,000. The BCE can absorb this cost if the budget is restored to full funding.

I have attached a copy of the current contract for your review. If you have any questions, please contact me.

STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages

AGREEMENT NUMBER

BCE-07-014

182-3971-7

REGISTRATION NUMBER

AMENDMENT NUMBER

1

1. This Agreement is entered into between the State Agency and Contractor named below:

STATE AGENCY'S NAME

Board of Chiropractic Examiners

CONTRACTOR'S NAME

Department of Consumer Affairs

2. The term of this

Agreement is: July 1, 2007 through June 30, 2008

3. The maximum amount of this \$134,886.00

Agreement is: (one hundred thirty-four thousand eight hundred eighty-six dollars and no cents)

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

This contract is amended to extend the contract term (6 months) and to add funds (\$33,057.00). Text deletions shall be displayed as ~~strike through~~ text, and text additions shall be displayed as **bold text**.

A. STD 213, Number 2 is hereby amended to read: The term of this Agreement is: July 1, 2007 through ~~December 31, 2007~~ **June 30, 2008**

B. STD 213, Number 3 is hereby amended to read: The maximum amount of this Agreement is: ~~\$101,829.00 (one hundred one thousand eight hundred twenty nine dollars and no cents)~~ **\$134,886.00 (one hundred thirty-four thousand eight hundred eighty-six dollars and no cents)**

C. The total amount of this amendment shall not exceed \$33,057.00 (thirty-three thousand fifty-seven dollars and no cents).

Continued on the next page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

Department of Consumer Affairs

BY (Authorized Signature)



DATE SIGNED (Do not type)

9-14-07

PRINTED NAME AND TITLE OF PERSON SIGNING

Pamela S. Wortman, Chief, Office of Administrative Services

ADDRESS

1625 North Market Blvd., Suite S-103
Sacramento, CA 95834

STATE OF CALIFORNIA

AGENCY NAME

Board of Chiropractic Examiners

BY (Authorized Signature)



DATE SIGNED (Do not type)

9/17/07

PRINTED NAME AND TITLE OF PERSON SIGNING

Brian Stiger, Acting Executive Director

ADDRESS

2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833CALIFORNIA
Department of General Services
Use Only

APPROVED

SEP 27 2007

DEPT OF GENERAL SERVICES

☐ Exempt per:

D. Exhibit B – Budget Detail and Payment Provisions, Number 4 - Cost Breakdown is hereby replaced with the following:

	<u>Classification</u>	<u>Class Code</u>	<u>Hourly Rate*</u>	<u>Hours</u>	<u>Potential Costs</u>
Budget	Associate Governmental Prog Analyst	5393	\$45	215	\$9,641.00
OHR	Staff Services Manager I	4800	\$51	315	\$16,184.00
Chief	Chief, BEAR/BHFTI (at 80%)	8806	\$69	835	\$38,399.00
DOI	Senior Investigator	8595	\$49	100	\$4,900.00
Legal	Staff Counsel III	5795	\$82	490	\$40,289.00
Audits	Associate Management Auditor	4159	\$49	177	\$8,673.00
Audits	Staff Management Auditor	4160	\$54	30	\$1,620.00
Audits	Senior Management Auditor	4161	\$59	20	\$1,180.00
<i>*includes benefits at 34.12 %</i>					
ILicensing Project/Funding FY 2007/08					\$14,000.00
Estimated Cost					\$134,886.00

E. All other terms and conditions shall remain the same.

State of California

MEMORANDUM

To: Administrative Committee

From: 
Brian J. Stiger
Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Date: March 20, 2008

Telephone: (916) 263-5359

Subject: **Board Member Administrative Procedure Manual Updates**

The Board of Chiropractic Examiners Board Member Administrative Manual needs the following changes to remain current:

Cover Page: Add Revision Date

Page 2: Changes need to reflect new officers.

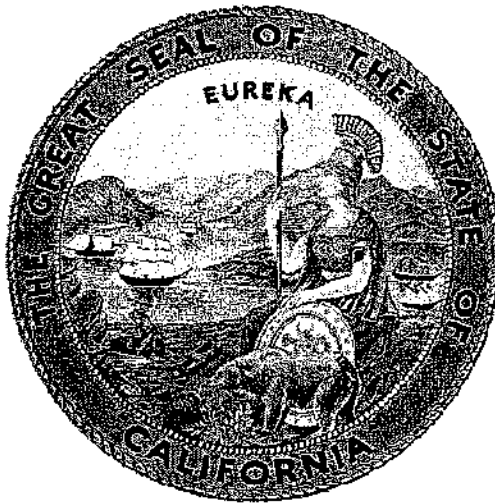
Pages 17-18: Changes need to reflect new standing committees as determined by the Board Chair.

Page 26: The citation under Board Member Orientation needs to be corrected to Board Policy. The current citation B & P Code section 453 pertains to all Boards under the Department of Consumer Affairs.

State of California

BOARD OF CHIROPRACTIC EXAMINERS BOARD MEMBER ADMINISTRATIVE MANUAL

Adopted October 25, 2007



Arnold Schwarzenegger, Governor
State of California

MISSION STATEMENT

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Members of the Board

Richard H. Tyler, D.C., Chair
Frederick Lerner, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Hugh Lubkin, D.C.
Judge James Duvaras, Ret., Public Member
Jim Conran, Public Member

Executive Officer

Brian J. Stiger

This procedure manual is a general reference including a review of some important laws, regulations, and these basic Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency. The Chiropractic Initiative Act of 1922 (the Act) will be referenced and summarized throughout this procedure manual.

This Administrative Procedure Manual, regarding Board Policy, can be amended by four affirmative votes of any current or future Board.

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

Request to Access Licensee or Applicant Records (Board Policy)

No Board member may access a licensee's, or applicant's file without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the Board's office at any time.

Communications: Other Organizations/Individuals/Media (Board Policy)

All communications relating to any Board action or policy to any individual or organization, or a representative of the media shall be made only by the Board Chair, his or her designee, or the Executive Officer. Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact.

Committee Appointments (Board Policy)

The Chair shall establish committees, whether standing or special, as he or she deems necessary.

The composition of the committees and the appointment of the members shall be determined by the Board Chair in consultation with the Vice Chair, Secretary, and the Executive Officer.



Standing Committees (Board Policy)

The Board has five standing committees:

1. Administrative Committee

The Administrative Committee continually reviews policies, procedures, budget, personnel, accounting, and departmental issues. The Administrative Committee works directly with the Executive Officer and staff to monitor budget expenditures, trends, and the Contingent Fund levels.

The Committee shall monitor individual line item expenditure and look for anomalies with a three year pattern for purposes of preparing a budget change proposal to correct either an under or over expenditure.

2. Continuing Education Committee

The Continuing Education Committee recommends regulations for mandatory continuing education and overseeing the Continuing Education Program, which includes program administration, continuing

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

education providers' evaluation, waiver requests review, and conducting regular at-random and continuing education audits.

3. **Enforcement Committee**

The purpose of the Enforcement Committee is to continually seek ways to improve the Board's enforcement activities. The committee shall consist of two Board members. Meetings will be held as necessary.

4. **Regulation Committee**

Proposes regulations that enhance the Board's role as a regulatory agency that protects the public.

5. **Legislative Committee**

The Legislative Committee shall consist of two Board members. The committee will review and recommend positions on bills that affect the Board.

The following classification system will be used by the committee in recommending Board positions:

1. **Support:** The Board supports the current version of the bill.
2. **Support if Amended:** The Board generally supports the concept or intent of the bill.
3. **Oppose:** The Board is opposed to the current version of the bill.
4. **Oppose Unless Amended:** The Board is opposed to the bill but is willing to work with the author and sponsor of the bill to resolve the Board's concerns.
5. **Watch:** The Board has some interest in the bill because it potentially may affect the work of the Board.

Committee Meetings (Board Policy)

Each of these committees is comprised of at least two Board members and staff, who provide technical and administrative input and support. The committees are an important venue for ensuring that staff and Board members share information and perspectives in crafting and implementing strategic objectives.

The Board's committees allow Board members, stakeholders and staff to discuss and conduct problem solving on issues related to the Board's

BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUAL

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:

(1) when a honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the Board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the Board Chair so that he or she, in consultation with the Executive Officer and staff counsel, may determine whether the potential for conflict of interest exists.

Board Member Orientation (B&P Code Section 453)

The California Business and Professions Code requires that a Board member orientation session be given to new Board members within one year of assuming office.

Ethics Training

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

Sexual Harassment Training (Government Code Section 12950.1)

Board members are required to undergo sexual harassment training and education once every two years. Staff will coordinate the training.

Addendums

Applicable provisions of the following:

Business and Professions Code
Executive Order 66-2
Government Code
State Administrative Manual

AGREEMENT NUMBER
BCE-07-007

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Board of Chiropractic Examiners

CONTRACTOR'S NAME

Pexis Corporation

2. The term of this Agreement is: July 1, 2007 through June 30, 2008

3. The maximum amount of this Agreement is: \$ 10,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 1 page

Exhibit B – Budget Detail and Payment Provisions 1 page

Exhibit C* – General Terms and Conditions 1 page

Check mark one item below as Exhibit D:

☐ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)

☒ Exhibit - D* Special Terms and Conditions 1 page

Exhibit E – Additional Provisions 2 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Pexis Corporation

BY (Authorized Signature)

PRINTED NAME AND TITLE OF PERSON SIGNING

Darryl Thibault, CEO

ADDRESS

3659 India Street, # 201, San Diego, CA 92103

DATE SIGNED (Do not type)

6-15-07

STATE OF CALIFORNIA

AGENCY NAME

Board of Chiropractic Examiners

BY (Authorized Signature)

PRINTED NAME AND TITLE OF PERSON SIGNING

Brian J. Stiger, Acting Executive Director

ADDRESS

2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931

California Department of General
Services Use Only

APPROVED

JUL - 6 2007

DEPT OF GENERAL SERVICES

☐ Exempt per:

EXHIBIT A
Scope of Work

The Board of Chiropractic Examiners (Board) Investigators, serves at the general direction of the Board's Executive Director and the lead of the Enforcement Program Manager. The investigators are expected to be knowledgeable with expertise in conducting investigations addressing violations of the Chiropractic Initiative Act or other applicable laws and regulations. The investigator's role is essential to the Board's enforcement of the law and protecting the health, welfare, and safety of the public.

A. Conduct independent and diverse administrative investigations against applicants for licensure and licensed chiropractors.

1. Detect or verify suspected violations of the Chiropractic Initiative Act, the California Code of Regulations, provisions of the Health and Safety Code, Business and Professions Code and other related codes.
2. Locate and interview suspects and witnesses and analyze and evaluate their testimony.
3. Examine a variety of records to secure or verify information concerning suspected violations and violators.
4. Contact and interview individuals and representatives of business and governmental organizations.
5. Gather, assemble, preserve, and report facts, statements or affidavits and other evidence for use in legal actions.
 - a. Conduct undercover and surveillance operations.
 - b. Investigate suspected misuse of license privileges.

B. Appear as a witness to present testimony in administrative actions.

1. Serve legal papers.
2. Interpret and explain the laws, rules, and regulations of the Board.
3. Cooperate and maintain liaison with Federal, State, and local law enforcement agencies.
4. Prepare correspondence, reports of investigations, affidavits and recommend action to be taken.
5. Prepare and serve investigative subpoenas, search warrants, subpoenas, and subpoena duces tecum.

C. Develop policies and procedures

1. Implement investigative policies and procedures, which specifically require law enforcement expertise. Act as technical advisor.

D. The project representatives during the term of this agreement will be:

State Agency: Board of Chiropractic Examiners	Contractor: Pexis Corporation
Name: Brian J Stiger, Acting Executive Director	Name: Darryl Thibault
Phone: (916) 263-5359	Phone: (619) 297-9959
Fax: (916) 263-5369	Fax: (619) 297-9062

Direct all inquiries to:

State Agency: Board of Chiropractic Examiners	Contractor: Pexis Corporation
Section/Unit:	Section/Unit:
Attention: Brian J. Stiger, Acting Executive Director	Attention: Darryl Thibault
Address: 2525 Natomas Park Drive, Suite 260 Sacramento, CA 95833-2931	Address: 3659 India Street, # 201 San Diego, CA 92103
Phone: (916) 263-5359	Phone: (619) 297-9959
Fax: (916) 263-5690	Fax: (619) 297-9062

EXHIBIT B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Marlene Valencia
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-2931

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Personal Services

Salary	(\$32.00 x 265 hours)	\$ 8,480.00
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Other Costs

Travel/Hotel (Mileage @ 44.5 a mile) (Parking)	\$ 1,220.00
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Rental Cars	<u>\$ 300.00</u>
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TOTAL COSTS	\$10,000.00
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EXHIBIT C
General Terms and Conditions

PLEASE NOTE: This page will not be included with the final agreement. The General Terms and Conditions will be included in the agreement by reference to Internet site: www.dgs.ca.gov/contracts

EXHIBIT D
Special Terms And Conditions

PLEASE NOTE: This page will not be included with the final agreement. The Special Terms and Conditions will be included in the agreement by reference to Internet site: www.dgs.ca.gov/contracts

EXHIBIT E
Additional Provisions

1. PROGRESS REPORTS

Contractor shall submit progress report to State representative, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Contractor to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

Progress payments are permitted for work performed under this contract. Ten percent of the invoiced amount shall be withheld pending final completion of the contract, receipt, and acceptance by the Board of Chiropractic Examiners of any final reports required under the contract.

2. INVOICING PROCEDURES

In consideration for the satisfactory completion of the services described herein, the State agrees to pay the Contractor, in arrears, upon receipt of an invoice in duplicate, for services rendered under this agreement. The invoice shall be submitted by the Contractor in sufficient scope and detail to define the actual work performed and specific milestones completed, including a description of the activities of the Contractor and subcontractors and the hours allocated to those activities. The hourly rate for services rendered shall not exceed those as set forth.

In accordance with the requirements set forth in the State Contracting Manual, Section 7.33.B, the State may withhold, from the invoiced payment amount to the Contractor, an amount equal to ten percent (10%) of that payment. Such retained amount shall be held by the State and only released to the Contractor upon the State's staff determination that the Contractor has satisfactorily completed all of the required services as itemized on the invoice. If it is determined that an amount is withheld, it shall be released pending final completion of the Agreement.

3. CONFIDENTIALITY OF INFORMATION

- A. The Contractor shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this contract or persons whose names or identifying information become available or are disclosed to the Contractor as a result of services performed under this contract, except for statistical information not identifying any such person.
- B. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract.
- C. The Contractor shall promptly transmit to the State all requests for disclosure of such identifying information not emanating from the client or person.
- D. The Contract shall not disclose, except as otherwise specifically permitted by this contract or authorized by the client, any such identifying information to anyone other than the State without prior written authorization from the State.
- E. For purposes of this paragraph, identify shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

4. CONFLICT OF INTEREST

A firm will not be awarded a contract if the financial interests are held by a current officer or employee of the State. Additionally, a contract will not be awarded to an officer or employee of the State as an independent contractor to provide goods and service. Likewise, the contracting agency officials and employees shall also avoid actions resulting in or creating an appearance of:

1. Using an official position for private gain;
2. Giving preferential treatment to any particular person;
3. Losing independence or impartiality;
4. Making a decision outside official channels; and,
5. Affecting adversely the confidence of the public or local officials in the integrity of the program.

Former State employees will not be awarded a contract for 2 years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for 1 year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from state service.

5. DISPUTES

Unless otherwise provided in This Agreement, any dispute concerning a question of fact arising under This Agreement which cannot be resolved informally shall be decided by the following two-step procedures.

The Contractor must provide written notice of the particulars of such disputes to the Project Coordinator or his/her duly appointed representative. The Project Coordinator must respond in writing within ten (10) working days of receipt of the written notice of dispute. Should the Contractor disagree with the Project Coordinator's decision, the Contractor may appeal to the second level. Pending the decision on appeal, the Contractor shall proceed diligently with the performance of This Agreement in accordance with the Project Coordinator's decision.

The second level appeal must indicate why the Project Coordinator's decision is unacceptable, attaching to it Contractor's original statement of the dispute with supporting documents, along with a copy of the Project Coordinator's response. This letter shall be sent to the Executive Director or his/her duly appointed representative. The second level appeal must be filed within fifteen (15) working days of receipt of the Project Coordinator's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such right to an adjustment of This Agreement. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal.

6. RIGHT TO TERMINATE

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

AGREEMENT NUMBER
BCE-07-009

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Board of Chiropractic Examiners

CONTRACTOR'S NAME

Ronald Strange, Sr. / Assurance Security Services

2. The term of this Agreement is: July 01, 2007 through June 30, 2008

3. The maximum amount of this Agreement is: \$ 20,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 1 page

Exhibit B – Budget Detail and Payment Provisions 1 page

Exhibit C* – General Terms and Conditions 1 page

Check mark one item below as Exhibit D:

☐ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)

☒ Exhibit - D* Special Terms and Conditions

Exhibit E – Additional Provisions

1 page

2 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Ronald Strange, Sr.

BY (Authorized Signature)



DATE SIGNED (Do not type)

6-26-07

PRINTED NAME AND TITLE OF PERSON SIGNING

Ronald Strange, Sr., President

ADDRESS

7201 Haven Avenue, Suite 452, Rancho Cucamonga, CA 91701

STATE OF CALIFORNIA

AGENCY NAME

Board of Chiropractic Examiners

BY (Authorized Signature)


PRINTED NAME AND TITLE OF PERSON SIGNING

Brian J. Stiger, Acting Executive Director

ADDRESS

2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931

California Department of General
Services Use Only

APPROVED

JUL - 6 2007

DEPT OF GENERAL SERVICES


☐ Exempt per:

EXHIBIT A
Scope of Work

The Board of Chiropractic Examiners (Board) Investigators, serves at the general direction of the Board's Executive Director and the Enforcement Program Manager. The investigators are expected to be knowledgeable with expertise in conducting administrative investigations addressing violations of the Chiropractic Initiative Act or other applicable laws and regulations. The investigator's role is essential to the Board's enforcement of the law and protecting the health, welfare, and safety of the public.

A. Conduct independent and diverse administrative investigations against applicants for licensure and licensed chiropractors.

1. Detect or verify suspected violations of the Chiropractic Initiative Act, the California Code of Regulations, provisions of the Health and Safety Code, Business and Professions Code and other related codes.
2. Locate and interview suspects and witnesses and analyze and evaluate their testimony.
3. Examine a variety of records to secure or verify information concerning suspected violations and violators.
4. Contact and interview individuals and representatives of business and governmental organizations.
5. Gather, assemble, preserve, and report facts, statements or affidavits and other evidence for use in legal actions.
 - a. Conduct undercover and surveillance operations.
 - b. Investigate suspected misuse of license privileges.

B. Appear as a witness to present testimony in administrative actions.

1. Serve legal papers.
2. Interpret and explain the laws, rules, and regulations of the Board.
3. Cooperate and maintain liaison with Federal, State, and local law enforcement agencies.
4. Prepare correspondence, reports of investigations, affidavits and recommend action to be taken.
5. Prepare and serve investigative subpoenas, search warrants, subpoenas, and subpoena duces tecum.

C. Develop policies and procedures

1. Implement investigative policies and procedures, which specifically require law enforcement expertise. Act as technical advisor.

D. The project representatives during the term of this agreement will be:

State Agency: Board of Chiropractic Examiners	Contractor: Assurance Security Services
Name: Brian J. Stiger, Acting Executive Director	Name: Ronald Strange, Sr.
Phone: (916) 263-5359	Phone: (909) 463-5773
Fax: (916) 263-5690	Fax: (909) 899-5258

Direct all inquiries to:

State Agency: Board of Chiropractic Examiners	Contractor: Assurance Security Services
Section/Unit:	Section/Unit:
Attention: Brian J. Stiger, Acting Executive Director	Attention: Ronald Strange, Sr.
Address: 2525 Natomas Park Drive, Suite 260 Sacramento, CA 95833-2931	Address: 7201 Haven Avenue, Suite 452 Rancho Cucamonga, CA 91701
Phone: (916) 263-5359	Phone: (909) 463-5773
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EXHIBIT B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted not more frequently than monthly in arrears to:

Marlene Valencia
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-2931

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Personal Services

Salary	(\$32 x 500 hours)	\$ 16,000.00
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Other Costs

Travel/Hotel (Mileage @ 44.5 a mile) (Parking)	\$ 3,500.00
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Rental Cars	\$ 500.00
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TOTAL COSTS	\$20,000.00
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EXHIBIT C
General Terms and Conditions

PLEASE NOTE: This page will not be included with the final agreement. The General Terms and Conditions will be included in the agreement by reference to Internet site: www.dgs.ca.gov/contracts

EXHIBIT D
Special Terms And Conditions

PLEASE NOTE: This page will not be included with the final agreement. The Special Terms and Conditions will be included in the agreement by reference to Internet site: www.dgs.ca.gov/contracts

EXHIBIT E
Additional Provisions

1. PROGRESS REPORTS

Contractor shall submit progress report to State representative, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Contractor to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

Progress payments are permitted for work performed under this contract. Ten percent of the invoiced amount shall be withheld pending final completion of the contract, receipt, and acceptance by the Board of Chiropractic Examiners of any final reports required under the contract.

2. INVOICING PROCEDURES

In consideration for the satisfactory completion of the services described herein, the State agrees to pay the Contractor, in arrears, upon receipt of an invoice, for services rendered under this agreement. The invoice shall be submitted by the Contractor in sufficient scope and detail to define the actual work performed and specific milestones completed, including a description of the activities of the Contractor and subcontractors and the hours allocated to those activities. The hourly rate for services rendered shall not exceed those as set forth.

In accordance with the requirements set forth in the State Contracting Manual, Section 7.33.B, the State may withhold, from the invoiced payment amount to the Contractor, an amount equal to ten percent (10%) of that payment. Such retained amount shall be held by the State and only released to the Contractor upon the State's staff determination that the Contractor has satisfactorily completed all of the required services as itemized on the invoice. If it is determined that an amount is withheld, it shall be released pending final completion of the Agreement.

3. CONFIDENTIALITY OF INFORMATION

- A. The Contractor shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this contract or persons whose names or identifying information become available or are disclosed to the Contractor as a result of services performed under this contract, except for statistical information not identifying any such person.
- B. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this contract.
- C. The Contractor shall promptly transmit to the State all requests for disclosure of such identifying information not emanating from the client or person.
- D. The Contract shall not disclose, except as otherwise specifically permitted by this contract or authorized by the client, any such identifying information to anyone other than the State without prior written authorization from the State.
- E. For purposes of this paragraph, identify shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

4. CONFLICT OF INTEREST

A firm will not be awarded a contract if the financial interests are held by a current officer or employee of the State. Additionally, a contract will not be awarded to an officer or employee of the State as an independent contractor to provide goods and service. Likewise, the contracting agency officials and employees shall also avoid actions resulting in or creating an appearance of:

1. Using an official position for private gain;
2. Giving preferential treatment to any particular person;
3. Losing independence or impartiality;
4. Making a decision outside official channels; and,
5. Affecting adversely the confidence of the public or local officials in the integrity of the program.

Former State employees will not be awarded a contract for 2 years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for 1 year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from state service.

5. DISPUTES

Unless otherwise provided in This Agreement, any dispute concerning a question of fact arising under This Agreement which cannot be resolved informally shall be decided by the following two-step procedures.

The Contractor must provide written notice of the particulars of such disputes to the Project Coordinator or his/her duly appointed representative. The Project Coordinator must respond in writing within ten (10) working days of receipt of the written notice of dispute. Should the Contractor disagree with the Project Coordinator's decision, the Contractor may appeal to the second level. Pending the decision on appeal, the Contractor shall proceed diligently with the performance of This Agreement in accordance with the Project Coordinator's decision.

The second level appeal must indicate why the Project Coordinator's decision is unacceptable, attaching to it Contractor's original statement of the dispute with supporting documents, along with a copy of the Project Coordinator's response. This letter shall be sent to the Executive Director or his/her duly appointed representative. The second level appeal must be filed within fifteen (15) working days of receipt of the Project Coordinator's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such right to an adjustment of This Agreement. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal.

6. RIGHT TO TERMINATE

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Enforcement Committee** of the **Board of Chiropractic Examiners** will be held as follows:

January 10, 2008

9:00 a.m.

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

May 24, 2007

June 21, 2007

November 27, 2007

Discussion and Possible Action:

- Draft Expert Consultant Guidelines

Discussion and Possible Action:

- Conflict of Interest re Expert Consultants

Discussion and Possible Action:

- Draft Regulations re Letter of Admonishment

Discussion and Possible Action:

- Draft Regulations Cite and Fine

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ENFORCEMENT COMMITTEE**

Hugh Lubkin, D.C., Chair

Francesco Columbu, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

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CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chlro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the Enforcement Committee of the Board of Chiropractic Examiners will be held as follows:

January 10, 2008
9:00 a.m.
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

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PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ENFORCEMENT COMMITTEE**

Hugh Lubkin, D.C., Chair

Francesco Columbu, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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**BOARD OF CHIROPRACTIC EXAMINERS****MEETING MINUTES****Enforcement Committee****Thursday May 24, 2007****400 R Street, Room 101
Sacramento, CA 95814****Committee Members Present**

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present

Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Sandra Patterson, Staff Services Analyst
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lubkin called the meeting to order at approximately 12:10 a.m.

Roll Call

Dr. Columbu called the roll. Both committee members were present.

Purpose of committee

Dr. Lubkin stated the committee's current purpose is to deal with matters pertaining to discipline and other miscellaneous matters. Mr. Stiger added that the committee's purpose needs to be further defined through future meetings and during the strategic planning process.

Discussion re Enforcement Process Overview

Sandra Patterson presented an overview of the enforcement process including complaint intake, investigation, and the formal administrative process. Mr. Stiger provided the staffing levels and their roles within the Enforcement Unit and stated that all disciplinary matters are approved through the Executive Director. Dr. Lubkin suggested that from a public safety perspective, he is concerned that the Board does not have a peace officer on staff to review complaints. Mr. Stiger stated most Boards and Bureaus within the Department of Consumer staff utilize trained internal staff to conduct the initial review of complaints to save costs and if the allegations rose to level that required peace officer involvement the case would proceed in that manner.

Dr. Lubkin asked how the board would implement section 306.1 since it has been approved through the APA process and been in place for 10 years. Dr. Lubkin asked if the Board's disciplinary guidelines are considered an underground regulation since it is inconsistent with CCR 306.1. Ms. Powell stated the disciplinary guidelines are incorporated into regulations by reference. Ms. Powell advised the committee to place 306.1 on an agenda for a future meeting for a full discussion. Ms. Powell added she has serious concerns about 306.1 as it is currently written and the effect it would have on the Board's enforcement program.

Dr. Lubkin moved that the committee place 306.1 on the agenda for the next meeting. Dr. Columbu seconded the motion.

Mr. Stiger stated that Board staff has made several changes to the Board's enforcement process to protect California consumers.

Dr. Columbu suggested that Board staff prioritize workload to deal with the most serious allegations. Also, he recommended that Expert Witnesses be reviewed every two years.

Mr. Stiger highly recommended that the Board provide upfront communication, education, and workshops to educate licensees.

Public Comment

Dr. Charles Davis, International Chiropractors Association of California, stated he would like to see 306.1 implemented since it has been in regulation since 1994.

Kristine Schultz, California Chiropractic Association, shared her concerns with inconsistent enforcement.

Discussion and Possible Action re Mail Ballots

Ms. Powell explained that she would be making changes to the mail ballot to include language that board members do not discuss cases with anyone including board members. Additionally, she recommended that the Board adopt a two member hold on mail ballots rather than the current one member hold.

Ms. Powell advised the committee that board members can call her if they have legal questions on stipulations or proposed decisions. Board members should not contact the Attorney General's officer, Executive Officer or opposing counsel.

Meeting Adjourned

Dr. Lubkin adjourned the meeting at approximately 12:50.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Enforcement Committee****June 21, 2007**

**Life Chiropractic College West
25001 Industrial Blvd.
Hayward, California 94545**

Committee Members Present

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present

Brian J. Stiger, Executive Officer
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lubkin called the meeting to order at approximately 9:10 a.m.

Roll Call

Dr. Columbu called the roll. Both committee members were present.

Discussion on CCR 306.1 Task Force

Dr. Lubkin provided a brief overview of section 306.1 and stated that the Board has never implemented the regulation. The Board has received several inquiries from the public about the status of section 306.1. The committee has been asked to study and provide recommendations back to the full Board on whether to proceed with Quality Review Panels. The committee will work with Board staff, hold public hearings, and will take written comment on this subject.

Dr. Lubkin informed the public that the Board may establish a public task force to assist with this matter and invited the public to send a letter of interest if one wishes to be considered to participate.

Public Comment:

Dr. Charles Davis, D.C. President of International Chiropractors Association of California submitted and discussed a proposal to implementation on how section 306.1. Dr. Davis states the goals of implementation of section 306.1 are proper enforcement, decrease processing time and decrease costs. Dr. Davis states the implementation of section 306.1 is mandatory as stated in the regulation.

Dr. Lubkin asked Dr. Davis for clarification on his proposal to establish Quality Review Panels by region rather than by county as stated in the regulation.

Dr. Lubkin asked the Acting Executive Director to gather statistics on complaint information by county by the next committee meeting.

Cost Recovery Procedures

Mr. Stiger defined cost recovery and the process the board utilizes to collect costs. He mentioned that the Board has submitted documents to the Franchise Tax Board to initiate the Intercept program to assist with the collection of these funds.

Meeting Adjourned

Dr. Lubkin adjourned the meeting at approximately 9:30.

DRAFT

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Enforcement Committee****November 27, 2007****400 R Street, Room 101
Sacramento, CA 95814****Committee Members Present**

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present

Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lubkin called the meeting to order at approximately 9:05 a.m.

Roll Call

Dr. Columbu called the roll. Both committee members were present.

Chiropractic Use of X-ray

Dr. Rodney Schell, D.C. informed the committee that he and two other chiropractors were employed by Community Mobile Diagnostics to take x-rays of non-chiropractic patients. The Radiological Health Branch (RHB) cited Community Mobile Diagnostics because the three chiropractors were taking x-rays without the proper license. Dr. Schell stated RHB terminated his employment as well as two other chiropractors that worked for Community Mobile Diagnostics based on the citation from RHB. Dr. Schell says RHB will allow chiropractors to take x-rays outside of the chiropractic office if the State Board of Chiropractic Examiners says it's within the chiropractic scope of practice.

Dr. Schell states that he took x-rays of non-chiropractic patients and that Community Mobile Diagnostics hired them as x-ray techs. Dr. Schell says that when they were hired, Community Mobile Diagnostics assumed that the chiropractic operator supervisor license superseded an x-ray tech license.

Dr. Dietrick, D.C. stated that Community Mobile Diagnostics told her that if she could get the State Board of Chiropractic Examiners to turn this around she would have her job back right away.

Ms. Powell stated this Board does not have jurisdiction over the department of Health Services.

Dr. Schell quotes Health and Safety Codes 107110 and 107111 to support his position and that he has no restrictions on which he can perform x-rays.

Ms. Powell stated that her reading of the law is that chiropractors can only take x-rays within the scope of practice of a chiropractic license, which is providing chiropractic treatment. She added that this Board only has jurisdiction over chiropractic practice.

Dr. Schell states that RBH agreed to allow chiropractors to take x-rays outside of the office if the State Board of Chiropractic Examiners determined that it is within the scope of practice.

Dr. Lubkin explains that this Board has not taken any action against Dr. Schell and why is he uncomfortable taking this issue up with RBH. Dr. Schell says RBH has stated it is up to the State Board of Chiropractic Examiners.

Dr. Schell wants to know if the Board authorized previous statements made to RBH by former Board staff.

Mr. Stiger added that RBH established their policy on this issue back in 1998 and their policy has never changed. He also commented that due to the Board's budget situation and enforcement priorities, staff would not even be able to look at this issue for a couple of months.

Public Comment

Dr. Charles Davis, D.C. states that neither the code nor the regulations restrict chiropractors from taking x-rays for diagnostic purposes for a medical doctor or chiropractor. He recommends that the Board write a statement to that effect.

A public member representing Life West states that chiropractors refer patient to the school for x-rays and the school wants to ensure they are compliant with the law. Dr. Lubkin states the committee is not attempting to restricting chiropractors from taking x-rays of chiropractic patients. The speaker reiterates that the law does not limit chiropractors with respect to taking x-rays.

Discussion and Possible Action: 306.1 Quality Review Panel

Dr. Davis provided 4 written options for the Board to consider in implementing 306.1. Dr. Davis offers option 1 as the easiest to implement. Dr. Davis suggests these options would minimize conflict of interest issues.

Dr. Lubkin asked how Dr. Davis would address the mandatory language requiring Quality Review Panels to be established in each county. Dr. Davis believes the counties can be consolidated.

Dr. Lubkin asked Dr. Davis for clarification between expert reviewers and quality review panels. Dr. Lubkin wanted to ensure the two weren't being blended.

Mr. Stiger added that Board staff has begun working on an expert reviewer manual and training.

Meeting adjourned.

Dr. Lubkin adjourned the meeting at 9:55.

STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor

BOARD OF CHIROPRACTIC EXAMINERS

Expert Witness Guidelines



Issued By:

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-2931
www.chiro.ca.gov

Revised January 2008

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Section I

INTRODUCTION

The California Board of Chiropractic Examiners ("Board") is an administrative agency created by the Chiropractic Initiative Act of 1922. The mission of the Board is to protect California consumers by licensing only those chiropractors that demonstrate competency and to take appropriate action whenever licensees fail to maintain the standard of practice. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. The primary purpose is to protect the public from incompetent, negligent, dishonest or impaired chiropractors. Your role as an expert consultant is extremely important, first in identifying whether a deviation from the standard of practice of chiropractic or unprofessional conduct has occurred and secondly in serving as an expert witness at any hearing that may result from your expert assessment.

The purpose of this booklet is to introduce you to the administrative disciplinary process against chiropractors and to define for you the expectations of the Board with respect to the expert review you have been asked to provide, your responsibilities, your legal protection, and your compensation for your review and, where necessary, your testimony.

As an expert consultant, which is the first stage of this process for yourself and perhaps the only stage, you will be provided with the complaint, patient records and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any preliminary expert consultant reviews in order to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided, to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved.

You are not asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. The opinion should be based upon your knowledge of the standard of practice, based upon your education, training and experience and not upon the manner in which you personally practice chiropractic care.

If you have had prior knowledge of the subject chiropractor or if you feel you cannot

be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of any additional documents or the records given to you appear incomplete, please contact the Board representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to cross-examination by respondent in regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing in order to prepare for the hearing.

The Board of Chiropractic Examiners very much appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes you play a vital role and your objective performance will reflect well on the Board and the profession.

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Section II

GUIDELINES FOR EXPERT REVIEWERS

TEN MOST ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action, and a stipulated agreement is not reached, you will be called upon to provide expert testimony. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid \$75 per hour for record review and a maximum of \$1200 per day for testimony at an administrative hearing. You will also be compensated for other expenses you may incur (i.e., parking, postage or travel, if applicable) in accordance with state law.

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form (which is required by the IRS) and return it with the statement.

4. Can I be sued for expressing my opinion?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert consultants.

Civil Code Section 43.8 states, in pertinent part:

“ . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff,

... professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, ... when such communication is intended to aid in the evaluations of the qualifications, fitness, character ... of a practitioner of the healing arts"

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are ever served with a lawsuit related to your participation in this process, you should immediately contact the Board staff.

5. Can I do some research?

Yes, you may consult chiropractic texts and other authoritative reference materials which help define accepted standards. However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

Generally, you are allowed 30 days. However, this varies depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed.

8. Can you give me a copy of a sample report?

Yes, please see Section V.

9. What is the difference between a departure and an extreme departure?

Generally speaking negligence is defined as a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

Gross negligence is defined as an extreme departure from the standard of practice

of chiropractic.

10. Which "community" do I use, when applying standards?

For our purposes "community" refers to the entire State of California.

INSTRUCTIONS

- A. Ensure that records/reports and materials provided for your review are kept confidential and secure.
- B. Look at the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with the Subject and patients.
- C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.
- D. Keep track of dates and hours spent reviewing.
- E. Do not mark on the copy of the records provided to you.
- F. Do not contact the Subject or patients.
- G. Do not discuss the case with third parties.
- H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the board.
- I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.
- J. Do not make a copy of the records.
- K. Do not destroy any of the materials provided to you.

- L. Remember to sign your opinion.
- M. Enclose an updated curriculum vitae with your opinion.
- N. When your review is completed, please contact the requestor and arrange to return the opinion along with your statement for services, payee data record form, curriculum vitae, and the records reviewed.
- O. If you have questions/concerns, contact the Board's Enforcement Manager or Executive Officer.

IMMUNITY FROM LIABILITY

Civil Code Section 43.8 states, in pertinent part:

" . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff.

CONFIDENTIALITY

Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board, except of course in a report to the agency or in testimony after legal proceedings are instituted against a licensee of the Board.

As an expert consultant to the Board, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and chiropractors involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. After your report is

written, all materials received should be returned to the Board. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Board is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of violations of the Chiropractic Initiative Act of California and the California Code of Regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act (**Government Code § 11150 et seq.**). Its investigations are conducted pursuant to **Government Code sections 11180 through 11191.**

The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing negligence or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, excessively treating patients, altering or creating false records, sexual misconduct, criminal acts and committing ethical violations. The discipline for practitioners committing such act or omissions serves to protect the public from unsafe and unethical practitioners.

The purpose of the disciplinary process is not to punish as in the criminal justice system, but to ensure that quality chiropractic care is provided to the residents of the State of California and to preserve high standards of the practice.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by a chiropractic Board consultant. If the Board consultant recommends an evaluation by an expert is necessary, it is then up to the Board's enforcement manager or executive office to obtain an expert consultant to ascertain whether a departure from the standard of practice occurred.

After the investigative process, if it is determined that the subject chiropractor's alleged acts or omissions constitute unprofessional conduct, the completed investigative report is submitted to the California Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to request a hearing to contest the charges.

The hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several months, depending upon the complexity of the case and the defense. Both sides may call expert witnesses to support their views. This makes it incumbent upon the expert consultant to ensure the utmost care is taken when reviewing cases.

The trier of fact (judge) hears evidence against and for the subject chiropractor and renders in writing a proposed decision, which is submitted to the Board members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board chiropractic consultant who then makes a recommendation as to whether or not an evaluation by an expert is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert consultant at this point, will be contacted by the Board and will be asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to evidentiary information provided in the investigation report. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether there is a departure from the standard of practice. You are not asked to be an advocate for the Board, the chiropractor or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action. The Board is not interested in using your services to advocate a position, make an example of or penalize a licensee. The Board only wants you to provide an objective evaluation so that he can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lesser enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the attorney in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the State's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the attorney general and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinion expressed by respondent's expert at hearing because oftentimes respondents experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

Specific laws governing unprofessional conduct:

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

- (a) Gross negligence;
- (b) Repeated negligent acts;
- (c) Incompetence;
- (d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
- (e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;
- (f) The administration to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;
- (g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;
- (h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendere is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.
- (i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances
- (j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substance;
- (k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
- (l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;
- (m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thereunder;
- (n) Making or giving any false statement or information in connection with the application for issuance of a license;
- (o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;

- (p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;
- (q) The participation in any act of fraud or misrepresentation;
- (r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;
- (s) The employment or use of persons known as cappers or steerers to obtain business;
- (t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person;
- (u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.
- (v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. **(Subdivision contains actual waiver language)**
- (w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.
- (x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care.

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted an extreme departure from the standard of practice (gross negligence),

repeated departure from the standard of care (repeated acts of negligence), or exhibited a lack of knowledge or ability in carrying out professional obligations (incompetence). Often, it is difficult to distinguish which of these definitions fits the treatment rendered and often, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment. Note: One "simple" departure from the standard of practice (negligence) is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is simple negligence versus repeated acts of negligence.

Generally speaking, a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

A lack of knowledge or ability in carrying out professional obligations is exhibited by evidence that the practitioner either lacked training in the particular area in which he or she exhibited unprofessional conduct or that he or she was unable to understand the standard of practice and perform according to its mandates.

Of course, the distinctions are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of practice within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct.

In this area, you are asked to assess, based upon the standards of practice, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged misconduct actually occurred. This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the sexual conduct is true.

3. Excessive Treatment Violations.

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." The "local community" is the State of California. In this type of case, you are asked to state the standard of the community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. For example.....This may also constitute gross negligence or repeated acts of negligence. Note: the insurance industry

does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

4. General Unprofessional Conduct.

Section 317 states that a chiropractor may be disciplined for unprofessional conduct, which includes, BUT IS NOT LIMITED TO certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described; and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

Section III

THE OPINION ITSELF

There are Sample Expert Opinions appended to this booklet at Section V. Please refer to those when writing your opinion, but remember that they are guidelines only, and that your case and the contents of your opinion will necessarily differ.

A. Contents.

Your expert opinion should contain:

1. An accurate listing of the records and other documents sent to you to be reviewed. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.") For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.
2. The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:

- a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.
- b. State the standard of practice for the treatment of such a patient. Remember to state the standard of practice for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.
- c. Specifically describe any deviations from the standard of practice and explain why. Each finding of a deviation from the standard should be specifically described. For example, your report should state as follows:

Subject chiropractor deviated from the standard of practice in three areas as follows:

*** (Insert example)**

*** (Insert example)**

*** (Insert example)**

State your opinion as to whether the overall care of this patient constitutes no departure, an ordinary departure, an extreme departure, a lack of knowledge or ability, excessive prescribing, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. State the basis for your opinion.

B. Violation vs. Mitigation.

In writing your opinion, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of practice and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or

aggravating factors. The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential.

The primary focus in an expert review is whether there has been a departure from the standard of practice of dentistry, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of practice may be relevant to a determination of the degree of departure, actual injury is not required to establish a violation of the Act. Also, just because there is no injury does not mean there was no departure from the standard of practice.

D. Evaluation and Credibility.

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened, while the subject may deny that it occurred. In those cases, your opinion may depend on whose statement you rely.

E. Assess the Standard of Practice as of the Time of the Violation.

The standard of practice of chiropractic is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of practice **AT THAT TIME**.

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert consultant. If you are aware of the standards at the time the violation occurred through your education, training and experience, you may render an opinion on the case.

F. Objectivity

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgements or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert reviewer should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses.

Section IV

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Consultant's Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert consultant. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation.

You will be compensated at the rate of \$75 per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, that is July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General.

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of \$100 per hour.

C. Testimony at Hearing.

You will be compensated at the rate of \$75 per hour for testimony, with the maximum fee allowable for a full day of testimony being \$1200.

D. Miscellaneous Expenses.

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section V

SAMPLE EXPERT OPINION

The sample expert opinion appended hereto are examples of the product the Board expects from your expert review. It is provided for purposes of reference as to form and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Exacerbation: Certain situations or conditions may exacerbate a chiropractor's actions with respect to a case. For example, being inebriated while seeing a patient may exacerbate an underlying lack of knowledge or ability. It is appropriate to describe such exacerbating conditions.

Guilty or Innocence: The expert reviewer's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of practice, or demonstrate a lack of knowledge or ability. The trier of fact will determine guilt or innocence.

Judgmental or subjective comments: Avoid terms such as *"this guy is clearly incompetent"* or *"no one in his right mind would do..."* Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation.

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, expert reviewers should not let any information regarding malpractice filings, settlements or judgements affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Mitigation: See Exacerbation, above. While certain facts or conditions may mitigate a situation to some degree, the expert reviewer should document but not draw conclusions from such information.

Penalties: It is not the role of the expert reviewer to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: *"She was rude and unprofessional to the patient."* Instead, describe what the expected standard was, and how the dentist deviated from the standard.

Section VI

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness*. What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the *discovery* phase of the case. (Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.)

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an *Administrative Hearing*, and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (*direct and cross examination*). The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet is "*clear and convincing evidence to a reasonable certainty*".

As with criminal trials, the Board presents its charges against the subject

chiropractor first. The chiropractor or attorney can cross-examine each witness. Then the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. In most cases, each side will give opening and closing statements, describing what they intend to prove, and summarizing what they have attempted to prove.

3. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire*. You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, dental education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the *standard of practice in the chiropractic community* for the type of procedure involved in the case. The term "standard of practice" or standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of practice. This can include omissions as well as commissions. You also may need to address a charge of incompetence based on use of outmoded procedures. In some

instances, you may be faced with a lack or paucity of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any were ordered, what instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of practice as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of practice. Was the treatment a simple departure or an extreme departure? For more information on this, see the Guidelines For Expert Reviewers in Section II.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony. You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.

4. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify the decision and adopt that.

ICAC Feedback

State of California

Arnold Schwarzenegger, Governor

California Board of Chiropractic Examiners



Guidelines for Expert Consultants

Insert Date

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Section I

INTRODUCTION

The California Board of Chiropractic Examiners ("Board") is an administrative agency created by the Chiropractic Initiative Act of 1922. The mission of the Board is to protect California consumers by licensing only those chiropractors that demonstrate competency and to take appropriate action whenever licensees fail to maintain the standard of practice. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. The primary purpose is to protect the public from incompetent, negligent, dishonest or impaired chiropractors. Your role as an expert consultant is extremely important, first in identifying whether a deviation from the standard of practice of chiropractic or unprofessional conduct has occurred and secondly in serving as an expert witness at any hearing that may result from your expert assessment.

The purpose of this booklet is to introduce you to the administrative disciplinary process against chiropractors and to define for you the expectations of the Board with respect to the expert review you have been asked to provide, your responsibilities, your legal protection, and your compensation for your review and, where necessary, your testimony.

As an expert consultant, which is the first stage of this process for yourself and perhaps the only stage, you will be provided with the complaint, patient records and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any preliminary expert consultant reviews in order to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided, to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved.

You are not asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. The opinion should be based upon your knowledge of the standard of practice, based upon your education, training and experience and not upon the manner in which you personally practice chiropractic care.

If you have had prior knowledge of the subject chiropractor or if you feel you cannot be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of

any additional documents or the records given to you appear incomplete, please contact the Board representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to cross-examination by respondent in regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing in order to prepare for the hearing.

The California Board of Chiropractic Examiners very much appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes you play a vital role and your objective performance will reflect well on the Board and the profession.

Office of the California Board of Chiropractic Examiners

INSERT ADDRESS AND TELEPHONE AND FAX NUMBERS

Section II

GUIDELINES FOR EXPERT REVIEWERS

TEN MOST ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action, and a stipulated agreement is not reached, you will be called upon to provide expert testimony. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid \$75 per hour for record review and a maximum of \$1200 per day for testimony at an administrative hearing. You will also be compensated for other expenses you may incur, (i.e., parking, postage or travel, if applicable) in accordance with state law.

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form (which is required by the IRS) and return it with the statement.

4. Can I be sued for expressing my opinion?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert consultants.

Civil Code Section 43.8 states, in pertinent part:

" . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are ever

served with a lawsuit related to your participation in this process, you should immediately contact the Board staff.

5. Can I do some research?

Yes, you may consult chiropractic texts and other authoritative reference materials which help define accepted standards. (also see Section VII Established Chiropractic Guidelines)

However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

Generally, you are allowed 30 days. However, this varies depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed.

8. Can you give me a copy of a sample report?

Yes, please see Section V.

9. What is the difference between a departure and an extreme departure?

Generally speaking negligence is defined as a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

Gross negligence is defined as an extreme departure from the standard of practice of chiropractic.

10. Which "community" do I use, when applying standards?

For our purposes "community" refers to the entire State of California.

INSTRUCTIONS

- A. Ensure that records/reports and materials provided for your review are kept confidential and secure.
- B. Look at the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with the Subject and patients.
- C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.
- D. Keep track of dates and hours spent reviewing.
- E. Do not mark on the copy of the records provided to you.
- F. Do not contact the Subject or patients.
- G. Do not discuss the case with third parties.
- H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the board.
- I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.
- J. Do not make a copy of the records.
- K. Do not destroy any of the materials provided to you.
- L. Remember to sign your opinion.
- M. Enclose an updated curriculum vitae with your opinion.
- N. When your review is completed, please contact the requestor and arrange to return the opinion along with your statement for services, payee data record form, curriculum vitae, and the records reviewed.
- O. If you have questions/concerns, contact the Board's Enforcement Manager or Executive Officer.

IMMUNITY FROM LIABILITY

Civil Code Section 43.8 states, in pertinent part:

" . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff.

CONFIDENTIALITY

Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board, except of course in a report to the agency or in testimony after legal proceedings are instituted against a licensee of the Board.

As an expert consultant to the Board, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and chiropractors involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. After your report is written, all materials received should be returned to the Board. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Board is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of violations of the Chiropractic Initiative Act of California and the California Code of Regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act (**Government Code § 11150 et seq.**). Its investigations are conducted pursuant to **Government Code sections 11180 through 11191.**

The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing negligence or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, excessively treating patients, altering or creating false records, sexual misconduct, criminal acts and committing ethical violations. The discipline for practitioners committing such act or omissions serves to protect the public from unsafe and unethical practitioners.

The purpose of the disciplinary process is not to punish as in the criminal justice system, but to ensure that quality chiropractic care is provided to the residents of the State of California and to preserve high standards of the practice.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by a chiropractic Board consultant. If the Board consultant recommends an evaluation by an expert is necessary, it is then up to the Board's enforcement manager or executive office to obtain an expert consultant to ascertain whether a departure from the standard of practice occurred.

After the investigative process, if it is determined that the subject chiropractor's alleged acts or omissions constitute unprofessional conduct, the completed investigative report is submitted to the California Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to request a hearing to contest the charges.

The hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several months, depending upon the complexity of the case and the defense. Both sides may call expert

witnesses to support their views. This makes it incumbent upon the expert consultant to ensure the utmost care is taken when reviewing cases. The trier of fact (judge) hears evidence against and for the subject chiropractor and renders in writing a proposed decision, which is submitted to the Board members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board chiropractic consultant who then makes a recommendation as to whether or not an evaluation by an expert is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert consultant at this point, will be contacted by the Board and will be asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to evidentiary information provided in the investigation report. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether there is a (clearly excessive) departure from the standard of practice. You are not asked to be an advocate for the Board, the chiropractor or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action. The Board is not interested in using your services to advocate a position, make an example of or penalize a licensee. The Board only wants you to provide an objective evaluation so that he can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lesser enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the attorney in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the State's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the attorney general and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinion expressed by respondent's expert at hearing because oftentimes respondents experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

Specific laws governing unprofessional conduct:

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

- (a) Gross negligence;
- (b) Repeated negligent acts;
- (c) Incompetence;
- (d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
- (e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;

- (f) The administration to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;
- (g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;
- (h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendere is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.
- (i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances
- (j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substance;
- (k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
- (l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;
- (m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thereunder;
- (n) Making or giving any false statement or information in connection with the application for issuance of a license;
- (o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;
- (p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;
- (q) The participation in any act of fraud or misrepresentation;
- (r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;
- (s) The employment or use of persons known as cappers or steerers to obtain business;
- (t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as

- compensation or inducement for referring patients to any person;
- (u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.
 - (v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. **(Subdivision contains actual waiver language)**
 - (w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.
 - (x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care.

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted an extreme departure from the standard of practice (gross negligence), repeated departure from the standard of care (repeated acts of negligence), or exhibited a lack of knowledge or ability in carrying out professional obligations (incompetence). Often, it is difficult to distinguish which of these definitions fits the treatment rendered and often, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment. Note: One "simple" departure from the standard of practice (negligence) is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is simple negligence versus repeated acts of negligence.

Generally speaking, a departure from the standard of practice of chiropractic is

conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

A lack of knowledge or ability in carrying out professional obligations is exhibited by evidence that the practitioner either lacked training in the particular area in which he or she exhibited unprofessional conduct or that he or she was unable to understand the standard of practice and perform according to its mandates.

Of course, the distinctions are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of practice within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct.

In this area, you are asked to assess, based upon the standards of practice, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged misconduct actually occurred. This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the sexual conduct is true.

3. Excessive Treatment Violations.

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." The "local community" is the State of California. In this type of case, you are asked to state the standard of the community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. For example.....This may also constitute gross negligence or repeated acts of negligence. Note: the insurance industry does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

(There are no written Standards of Care anywhere for chiropractic care)
(There would be a need for Utilization of Established Guidelines)
(What are some Established Chiropractic Guidelines?)
(The treatment/diagnosis must be "clearly excessive")

4. General Unprofessional Conduct.

Section 317 states that a chiropractor may be disciplined for unprofessional

conduct, which includes, BUT IS NOT LIMITED TO certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described, and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

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Section III

THE OPINION ITSELF

There are Sample Expert Opinions appended to this booklet at Section V. Please refer to those when writing your opinion, but remember that they are guidelines only, and that your case and the contents of your opinion will necessarily differ.

A. Contents.

Your expert opinion should contain:

1. An accurate listing of the records and other documents sent to you to be reviewed. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.") For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.
2. The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:
 - a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.
 - b. State the standard of practice for the treatment of such a patient. Remember to state the standard of practice for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.
 - c. Specifically describe any deviations from the standard of practice and explain why. Each finding of a deviation from the standard should be specifically described. For example, your report should state as follows:

Subject chiropractor deviated from the standard of practice in three areas as follows:

*** (Insert example)**

*** (Insert example)**

*** (Insert example)**

State your opinion as to whether the overall care of this patient constitutes no departure, an ordinary departure, an extreme departure, a lack of knowledge or ability, excessive prescribing, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. State the basis for your opinion.

Need to utilize established guidelines. There are no Standards of Care written anywhere for chiropractic care.

B. Violation vs. Mitigation.

In writing your opinion, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of practice and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or aggravating factors. The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential.

The primary focus in an expert review is whether there has been a departure from the standard of practice of dentistry, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of practice may be relevant to a determination of the degree of departure, actual injury is not required to establish a violation of the Act. Also, just because there is no injury does not mean there was no departure from the standard of practice.

D. Evaluation and Credibility.

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened,

while the subject may deny that it occurred. In those cases, your opinion may depend on whose statement you rely.

E. Assess the Standard of Practice as of the Time of the Violation.

The standard of practice of chiropractic is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of practice **AT THAT TIME**.

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert consultant. If you are aware of the standards at the time the violation occurred through your education, training and experience, you may render an opinion on the case.

F. Objectivity.

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgements or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert reviewer should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses.

Section IV

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Consultant's Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert consultant. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation.

You will be compensated at the rate of \$75 per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, that is July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General.

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of \$100 per hour.

C. Testimony at Hearing.

You will be compensated at the rate of \$75 per hour for testimony, with the maximum fee allowable for a full day of testimony being \$1200.

D. Miscellaneous Expenses.

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section V

SAMPLE EXPERT OPINION

The sample expert opinion appended hereto are examples of the product the Board expects from your expert review. It is provided for purposes of reference as to form and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Exacerbation: Certain situations or conditions may exacerbate a chiropractor's actions with respect to a case. For example, being inebriated while seeing a patient may exacerbate an underlying lack of knowledge or ability. It is appropriate to describe such exacerbating conditions.

Guilty or Innocence: The expert reviewer's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of practice, or demonstrate a lack of knowledge or ability. The trier of fact will determine guilt or innocence.

Judgmental or subjective comments: Avoid terms such as "*this guy is clearly incompetent*" or "*no-one in his right mind would do...*" Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation.

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, expert reviewers should not let any information regarding malpractice filings, settlements or judgements affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Mitigation: See Exacerbation, above. While certain facts or conditions may mitigate a situation to some degree, the expert reviewer should document but not draw conclusions from such information.

Penalties: It is not the role of the expert reviewer to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: "*She was rude and unprofessional to the patient.*" Instead, describe what the expected standard was, and how the dentist deviated from the standard.

Section VI

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness*. What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the *discovery* phase of the case. (Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.)

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an *Administrative Hearing*, and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (*direct and cross examination*). The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet is "*clear and convincing evidence to a reasonable certainty*". (This is more than just a preponderance of evidence)

As with criminal trials, the Board presents its charges against the subject chiropractor first. The chiropractor or attorney can cross-examine each witness. Then

the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. In most cases, each side will give opening and closing statements, describing what they intend to prove, and summarizing what they have attempted to prove.

3. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire*. You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, dental (Chiropractic) education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the standard of practice in the chiropractic community for the type of procedure involved in the case. The term "standard of practice" or standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of practice. This can include omissions as well as commissions. You also may need to

address a charge of incompetence based on use of outmoded procedures. In some instances, you may be faced with a lack or paucity of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any, were ordered, what instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of practice as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of practice. Was the treatment a simple departure or an extreme departure? For more information on this, see the Guidelines For Expert Reviewers in Section II.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony. You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.

4. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify the decision and adopt that.

Section VII

REFERENCE: Chiropractic Guidelines

Current Established Guidelines

The Guidelines for Chiropractic Quality Assurance and Practice Parameters (Mercy Conference) (1993)

www.ibpub.com/catalog/0763729213/

International Chiropractors Association (2000, currently being revised, 2008)

www.chiropractic.org/index.php?p=guidelines/main

Council on Chiropractic Practice (CCP) (2003)

www.ccp-guidelines.org/guideline-2003.pdf

Oregon

www.oregon.gov/OBCE/prac_guidelines.shtml

North Carolina

www.ncchiroboard.com/pdfs/Guidelines.pdf

Whiplash Guidelines - adopted by Alaska, Arkansas, Colorado, Kentucky, Minnesota, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Washington and The International Chiropractic Association

nmchiroassoc.com/croft%20guidelines.pdf

Section VIII

Qualifications & Tasks for Expert Reviewers

DEFINITION

Expert Reviewers serve as consultants to the State Board of Chiropractic Examiners and work co-operatively with the BCE Executive Director and BCE staff reviewing, investigating, and determining issues related to the professional competence of California chiropractors; to provide their chiropractic expertise in the review of chiropractic investigations and evaluations of the professional conduct of licensees in relation to the requirements of the law. This may require and involve review of treatment and examination chart notes, treatment and other related records or other materials, whenever reasonable cause exists to initiate an action against a licensed chiropractor. They may also be asked to testify on behalf of the Board of Chiropractic Examiners.

TYPICAL TASKS

(1) To review cases that will be primarily focused on Standard of Care issues as in the appropriateness of care, duration and/or frequency of care, appropriateness of referrals, record keeping, advertising, scope of practice issues and any other issues or concerns related to the evaluation and/or treatment of patient's provided by persons licensed as doctor's of chiropractic by the State of California or other recommendations up to and including referral to the Executive Director for review and potentially the filing of a complaint against that licensee.

MINIMUM QUALIFICATIONS

Possession of a valid license for the practice of chiropractic in California as determined by the California Board of Chiropractic Examiners.

And Experience: Five years of clinical experience treating patients, within the last seven years of being a licensee in California in good standing with the BCE.

KNOWLEDGE AND ABILITIES

Knowledge of: Chiropractic Act and regulations, including recent developments and practices; record-keeping practices; related provisions of the Business and Professions Code concerning the practice of chiropractic and the laws, rules and regulations of the practice of Chiropractic as published by the Board of Chiropractic Examiners. This includes relevant laws and regulations related to the practice of chiropractic and different chiropractic treatment procedures.

Ability to: Review files and other reports or records; exercise sound chiropractic clinical judgment in reviewing conflicting chiropractic reports and preparing opinions; dictate correspondence; prepare reports; communicate effectively.

SPECIAL PERSONAL CHARACTERISTICS

Demonstrated ability to work cooperatively with others; emotional stability; integrity; initiative; good judgment; dependability; tact; courtesy; high professional ethics; willingness to travel

throughout the State.

Conflict of Interest

- (1) No Expert Reviewer may have been employed with any insurance company or chiropractic review service within two years prior to their appointment as an Expert Reviewer.
- (2) No Expert Reviewer may participate, consult with or render a decision regarding any case which involves a past or present patient or treatment provided by the Expert Reviewer.
- (3) No Expert Reviewer may participate, consult with or render a decision regarding any case or complaint where the Expert Reviewers member has a direct or indirect business or personal relationship/involvement with the Expert Reviewer.
- (4) An Expert Reviewer shall not receive compensation as an agent or employee of or a contractor for an insurance company. This does not prevent an Expert Reviewer who is a licensed chiropractor from receiving compensation from an insurance company for patient care as provided for in a patient's insurance policy.

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Definitions:

☐ **Gross negligence** (*an extreme departure from the standard of practice*):

Chiropractors failing to do basic diagnostic tests, not recognizing or acting on common symptoms, not using accepted effective treatments or diagnostic procedures, using outdated procedures, not referring a patient to a specialist when appropriate.

☐ **Negligence** (*a simple departure from the standard of practice*): negligent acts that are not an extreme departure.

One act of simple negligence usually is not enough to take formal action against a doctor's license. However, patterns of repeated negligent acts may be sufficient grounds in some cases.

☐ **Incompetence** (*a lack of knowledge or ability in discharging professional chiropractic obligations*): a chiropractor who is unable to recognize and act appropriately on symptoms would be considered incompetent.

☐ **Defining the Standard of Care**

The term "standard of care" does not represent guidelines; nor does it represent a "paint by numbers" or "cookbook" methodology.

Similarly, the standard of care does not represent scope-of-care laws. Scope-of-care laws, which vary from state to state, represent the legal dictates defining what therapeutic procedures a chiropractor may or may not utilize and on what bodily regions.

The legal definition of the chiropractic standard of care may vary slightly from state to state, but the essential concept is: "What a (licensed) prudent, competent doctor of chiropractic in the same region would do in the same or similar circumstances." The chiropractic standard of care represents conduct that has been established with scientific, empirical, and/or clinical evidence.

Consensus opinions including such factors as how widely used the form of treatment is, where it is taught, and how appropriate it is for the condition(s) upon which it is utilized are considered. Case law can be applied to help legally define specific aspects of the standard of care.

If the review determines that the actions of the doctor were not below the acceptable standard of chiropractic care, the Board has no authority to proceed, and the complaint will be closed. If the Board finds that the treatment fell below the standard of care but does not represent gross negligence, the complaint will be closed but will be maintained on file for the Board's future reference.

If a complaint is referred to an investigative office and a violation is confirmed, the case may be submitted to the Office of the Attorney General for a formal charge that may lead to disciplinary action against the doctor's license.



CCA Feedback

CALIFORNIA CHIROPRACTIC ASSOCIATION

January 3, 2008

VIA E-MAIL

Mr. Brian Stiger
Executive Officer
California Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Re: **Proposed BCE Guidelines for Expert Consultants Manual**

Dear Brian:

On behalf of the California Chiropractic Association, I thank you for the opportunity to review and comment on the proposed state Board of Chiropractic Examiners' (BCE) *Guidelines for Expert Consultants* manual. CCA is very pleased that the BCE is acting quickly and aggressively in bolstering its consumer protection resources.

In conducting its initial review of the draft manual, CCA focused on its completeness, fairness to the consumer and licensee in investigating claims and clarity for the expert doctor of chiropractic and enforcement staff. It is in these contexts that our below preliminary comments on the manual are offered. We look forward to expanding on these at the January 10, 2008, hearing of the BCE Enforcement Committee and throughout the manual adoption process.

Comments

- What is the process for identifying and recruiting expert consultants? Are there specific qualifications that must be met and if so, how are those qualifications substantiated for individual doctors of chiropractic? Are their names made public at any time?
- CCA believes that it is in the interest of the consumer or law enforcement agency levying a complaint and the doctor of chiropractic being investigated that the expert consultant be provided with all evidence in the case so he or she can render an opinion knowledgeable in all the known facts.
- The expert consultant should be permitted to consult with other doctors of chiropractic or others relevant experts provided all case specific information is kept confidential by the expert consultant, e.g., name of doctor being investigated, name of complainant, etc.
- Does the expert reviewer get relevant statutory and regulatory code resources at the time of review? If so, the manual should make specific reference to that fact for the sake of clarity.
- CCA is concerned that the way the manual is written, the BCE could engage in "shopping" for an opinion it seeks. See for example page 2 that states the expert reviewer would not be provided "a copy of any preliminary expert consultant reviews...."

For fairness reasons, the manual should make clear that only one expert opinion on the specific matter in question is sought and accepted.

- What is considered "authoritative reference materials" to be used to determine "accepted standards"? (See page 2, last paragraph.)
- Under the "Ten Most Asked Questions," beginning on page 4, again for clarity reasons, CCA suggests adding to the end of the first sentence in response to question 3, "How soon will I be paid?" the following: "Generally speaking, you should receive payment for your services within four to six weeks *upon receipt of your billing for services rendered.*" [Added language in italics.]
- Under the "Ten Most Asked Questions," does the answer to question 4 about the expert reviewer's exposure to civil liability, as well as the section titled "Immunity from Liability" on page 7, contradict BCE regulatory Section 306.2 that states: "If a person, not a regular employee of the board, is hired or is under contract to provide expertise or to perform investigations for the Board of Chiropractic Examiners in the evaluation of the conduct of a licensee or administration of a board examination, and such person is named as a defendant in a civil action directly resulting from opinions rendered, statements made, investigations conducted or testimony given, the board shall provide for representation required to defend the defendant in that civil action. ***The board shall not be liable for any judgment rendered against that person.***"? [Emphasis added.]
- Under the "Ten Most Asked Questions," the answer to question 7 relative to who will see the expert reviewer's report should be expanded to include the possibility the report could become public record if a disciplinary action is filed and ends up at an administrative hearing or in superior court. Again, this recommendation is made in the interest of completeness of the manual and clarity.
- Under the "Ten Most Asked Questions," question 10 and elsewhere in the manual, what is the legal reference that defines "community" as the State of California?
- Under item G of "Instructions" on page 6, it states the expert review shall not discuss the case at hand with third parties. However, this instruction seem to contradict the last sentence in the first paragraph of page 8 that states: "The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report." Further, who is considered an allowable "assistant"?
- "Character of information" referred to under "Confidentiality" on page 7 should be defined for the sake of clarity.
- There should be examples or guidance as to what are considered "ethical violations" referred to in the third paragraph under "Investigations and the Disciplinary Process" on page 8 and elsewhere as otherwise it might be based on only one person's opinion.
- For completeness and clarity reasons, the second full paragraph on page 9 should state specifically who determines whether the actions of the chiropractor constitute "alleged" unprofessional conduct and who prepares the formal accusation.
- On page 13, under the section "Sexual Misconduct," the second paragraph appears potentially confusing. If the expert reviewer is to assume the complainant's account is true, then has it already been determined that the chiropractor engaged in sexual misconduct? CCA suspects there will be complaints about perceived inappropriate touching which may or may not involve sexual misconduct and a judgment therefore

Brian Stiger
January 3, 2008
Page 3

needs to be made, but the reading of this paragraph does not make that clear. In addition, on page 16, paragraph "D. Evaluation and Credibility" appears to contradict the second paragraph under "Sexual Misconduct" on page 13 by asking the reviewer to determine upon whose statement he or she relies.

- On page 15, paragraph numbered 2, identify whose findings the expert reviewer is summarizing for the sake of clarity.
- On page 16, there are a few references to "dentistry" and "dentist" that need to be replaced with the appropriate chiropractic references.
- On page 18 in the subsection "Terms to be Avoided in Reports" under Section V, it states that the term "exacerbation" be avoided but it then goes on to seemingly calls on the reviewer to do the opposite, i.e., "It is appropriate to describe such exasperating conditions." The same potentially contradictory situation appears to exist in the same section under the term "mitigation."
- On page 20, question number 4 under "Your Testimony," the phrase "board eligibility" is unclear, i.e., "...board eligibility you have achieved"?

Brian, thank you in advance for your consideration of our comments and questions. Should you desire further input, please contact me at bhowe@calchiro.org or 916-648-2727, ext. 133.

Cordially,

/signed/

WILLIAM A. HOWE III
Executive Director

cc: LaVonne Powell, BCE Counsel
Dr. Bill Updyke, CCA President
Kristine Shultz, CCA Governmental Affairs Director

PROPOSED REGULATION RE LETTER OF ADMONISHMENT

January 10, 2008

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated.
- (c) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
 - (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
 - (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.
 - (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
 - (C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).
 - (D) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
 - (E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.
 - (2) Comply with the letter of admonishment and submit a written corrective action plan to the Executive Officer documenting compliance.
 - (3) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is

served by certified mail, service shall be effective upon deposit in the United States mail.

- (d) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.
- (e) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:
 - (1) Issue a citation pursuant to Section 390 California Code of Regulations.
 - (2) Institute disciplinary proceedings pursuant to Section 10 of the Act.

DRAFT

PROPOSED REGULATIONS RE CITE AND FINE
January 10, 2008

§390. Issuance of Citations and Fines.

(a) The Executive Officer of the board or his/ or her designee may issue a citation containing an order to pay a fine between \$100 and \$5,000 and with an order of abatement against a licensee for any violation of the Act or the California Code of Regulations which would be grounds for discipline. A citation may be issued without the assessment of a fine.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law and/or regulation alleged to have been violated.

(c) The citation shall be served upon the cited person either individual personally or by certified mail.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.1. Criteria to Be Considered.

In the issuance of any citation, the following factors shall be considered:

- (a) Nature and severity of the violation.
- (b) Length of time that has passed since the date of the violation.
- (c) Consequences of the violation, including potential or actual patient harm.
- (d) History of previous violations of the same or similar nature.
- (e) Evidence that the violation was willful.
- (f) Gravity of the violation.

(g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

~~§390.2. Violation Codes and Penalty.~~

~~(a) The issuance of a citation can be for any of the following violations:~~

- ~~Title 16 California Code of Regulations Section 302(a)(7)~~
- ~~Title 16 California Code of Regulations Section 303~~
- ~~Title 16 California Code of Regulations Section 308~~
- ~~Title 16 California Code of Regulations Section 310~~
- ~~Title 16 California Code of Regulations Section 310.2~~
- ~~Title 16 California Code of Regulations Section 314~~
- ~~Title 16 California Code of Regulations Section 312~~
- ~~Title 16 California Code of Regulations Section 312.1~~
- ~~Title 16 California Code of Regulations Section 313~~
- ~~Title 16 California Code of Regulations Section 317(d)~~
- ~~Title 16 California Code of Regulations Section 317(f)~~
- ~~Title 16 California Code of Regulations Section 317(p)~~
- ~~Title 16 California Code of Regulations Section 317(r)~~
- ~~Title 16 California Code of Regulations Section 317(u)~~
- ~~Title 16 California Code of Regulations Section 317.1~~
- ~~Title 16 California Code of Regulations Section 318~~
- ~~Title 16 California Code of Regulations Section 319~~
- ~~Title 16 California Code of Regulations Section 355(b)~~
- ~~Title 16 California Code of Regulations Section 367.5(a)~~
- ~~Title 16 California Code of Regulations Section 367.7~~
- ~~Chiropractic Initiative Act Section 15~~
- ~~Business and Professions Code Section 725~~
- ~~Business and Professions Code Section 1054~~
- ~~Business and Professions Code Section 1055~~
- ~~Business and Professions Code Section 17500~~
- ~~Health and Safety Code Section 123140~~

~~(b) In his/her discretion, the Executive Officer or designee may issue an order of abatement for the first violation of any provision set forth in subsection (a).~~

~~(c) If a licensee has previously been issued two citations for violation of any of the code sections in subsection (a), the third violation will result in filing an accusation.~~

~~NOTE: Authority cited: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000 4(b) and 1000 10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.~~
~~HISTORY: 1. New section filed 9 25 2000; operative 10 25 2000 (Register 2000, No. 39). 2. Amendment of subsection (a) filed 10 16 2003; operative 11 15 2003 (Register 2003, No. 42).~~

§390.3. Citations for Unlicensed Practice.

The Executive Officer or his/her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the board and who is not otherwise exempt from licensure. Each citation may contain an order of abatement fixing a reasonable period of time for an abatement and an order to pay a fine not to exceed \$5,000 for each violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000, operative 10-25-2000 (Register 2000, No. 39).

§390.4. Contested Citations.

(a) The citation shall inform the licensee that if he/she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing provided for in subdivision (a) of this section, the cited person may, within 14 calendar days after service of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the person cited and/or his/her legal counsel or authorized representative.

(d) The Executive Officer or his/her designee may affirm, modify or dismiss the citation, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued.

(e) If the citation is dismissed, the request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.5. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, the person cited may request an extension of time from the Executive Officer or his/her designee in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation or order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation within the time allowed or pay the fine that is imposed shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay a fine that is imposed is unprofessional conduct and may result in disciplinary action being taken by the board.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.6. Notification to Other Boards and Agencies.

The issuance and disposition of a citation shall be reported to other chiropractic boards and other regulatory agencies. A licensee's compliance with an order of abatement or payment of a fine based on the finding of a violation may only be disclosed to the public as satisfactory resolution of the matter.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p.

1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY:

1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

DRAFT

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Enforcement Committee
January 10, 2008
400 R Street, Room 101
Sacramento, CA 95814**

Committee Members Present

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lubkin called the meeting to order at 9:03 a.m.

Roll Call

Dr. Columbu called the roll. All committee members were present.

Draft Regulations re Letter of Admonishment

Dr. Lubkin explained the purpose and need for the Letter of Admonishment and suggested minor edits to the proposed language.

Mr. Stiger stated this is an important enforcement tool for Board Staff and requested that the committee adopt the proposed language.

Bill Howe, CCA, congratulated the Board for taking steps to improve enforcement. He requested that CCA have the opportunity to provide written comments and had several clarifying questions.

Mr. Stiger stated that this proposal would move through the regulatory process, which provides an

opportunity for written comments.

Dr. Charles Davis, D.C., ICAC, spoke in support of this proposal.

DR. COLUMBU MOVED TO ADOPT THE PROPOSED REGULATORY LANGUAGE FOR THE LETTER OF ADMONISHMENT. DR. LUBKIN SECONDED THE MOTION: VOTE 2-0. MOTION CARRIED.

Draft Regulations re Cite and Fine

Dr. Lubkin explained the need and purpose of this proposal. He suggested minor edits to the proposed language.

Dr. Charles Davis, D.C., ICAC, asked what happens when a licensee repeatedly violates the same laws. Mr. Stiger stated the Board uses the philosophy of progressive discipline and multiple citations may lead to the filing of an accusation.

Bill Howe, CCA, wanted to ensure that unlicensed individuals would receive citations.

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Approval of Minutes

DR. COLUMBU MOVED TO ADOPT THE MINUTES AS AMENDED OF THE MAY 24, 2007 MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.

DR. COLUMBU MOVED TO ADOPT THE MINUTES OF JUNE 21, 2007 MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.

DR. COLUMBU MOVED TO ADOPT THE MINUTES AS AMENDED OF NOVEMBER 27, 2007. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.

Draft Expert Consultant Guidelines

Ms. Powell suggested that those individuals that made comments on the guidelines should meet to work through the guidelines in detail. Ms. Powell stated this would not be a committee meeting or a Board meeting. It would be limited to those individuals that expressed comments on the first draft.

Roger Calton, Attorney, concurred with Ms. Powell's suggestion and provided copies of his suggestions to the committee members and Board staff. Mr. Calton suggested that a conflict of interest provision be included in the guidelines or in a separate selection document.

Bill Howe, CCA, expressed support for this project and he provided suggestions for selecting expert reviewers. He wanted to make sure that staff could not withhold relevant information to the expert witness. He expressed concern about conflict of interest issues.

Dr. Charles Davis, ICAC, suggested that Mr. Stiger establish guidelines for staff to use in reviewing complaints. Dr. Davis expressed conflict of interest issues pertaining to the expert witnesses.

Mr. Stiger expressed his concern to the committee of a perceived move to impose restraints and guidelines on current staff. He stated that these constraints impair the ability of the staff to conduct its business in an efficient and effective manner.

Dr. Lubkin adjourned the meeting at 9:45 a.m.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Enforcement Committee** of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the Legislative Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

January 10, 2008

Discussion and Possible Action:

- Expert Witness Manual
- Expert Witness Qualifications

Discussion and Possible Action:

- Special Investigator Proposal

Discussion:

- Scope of Radiography in the Chiropractic Practice

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****ENFORCEMENT COMMITTEE**

Hugh Lubkin, D.C., Chair

Francesco Columbu, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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Draft Expert Consultant Guidelines

Ms. Powell suggested that those individuals that made comments on the guidelines should meet to work through the guidelines in detail. Ms. Powell stated this would not be a committee meeting or a Board meeting. It would be limited to those individuals that expressed comments on the first draft.

Roger Calton, Attorney, concurred with Ms. Powell's suggestion and provided copies of his suggestions to the committee members and Board staff. Mr. Calton suggested that a conflict of interest be included in the guidelines or in a separate selection document.

Bill Howe, CCA, expressed support for this project and he provided suggestions for selecting expert reviewers. He wanted to make sure that staff could not withhold relevant information to the expert witness. He expressed concern about conflict of interest issues.

Dr. Charles Davis, ICAC, suggested that Mr. Stiger establish guidelines for staff to use in reviewing complaints. Dr. Davis expressed conflict of interest issues pertaining to the expert witnesses.

Mr. Stiger expressed his concern to the committee of a perceived move to impose restraints and guidelines on current staff. He stated that these constraints impair the ability of the staff to conduct its business in an efficient and effective manner.

Dr. Lubkin adjourned the meeting at 9:45 a.m.

DRAFT

STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor

BOARD OF CHIROPRACTIC EXAMINERS
Expert Witness Guidelines



Issued By:

Board of Chiropractic Examiners
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Revised March 2008

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Section I

INTRODUCTION

The California Board of Chiropractic Examiners ("Board") is an administrative agency created by the Chiropractic Initiative Act of 1922. The Board's mission is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. Your role as an expert reviewer is extremely important, first in identifying whether a deviation from the standard of care of chiropractic or unprofessional conduct has occurred and secondly in serving as an expert witness at any hearing that may result from your expert assessment.

The purpose of this booklet is to introduce you to the administrative disciplinary process against chiropractors and to define for you the expectations of the Board with respect to the expert review you have been asked to provide, your responsibilities, your legal protection, and your compensation for your review and, where necessary, your testimony.

As an expert reviewer, which is the first stage of this process for yourself and perhaps the only stage, you will be provided with the complaint, patient records and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any report prepared by another Board expert reviewer in order to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided, to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved.

You are not asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. The opinion should be based upon your knowledge of the standard of care, based upon your education, training and experience and not upon the manner in which you personally practice chiropractic care.

If you have had prior knowledge of the subject chiropractor or if you feel you cannot be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of any additional documents or the records given to you appear incomplete, please contact the Board

representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to cross-examination by respondent regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing in order to prepare for the hearing.

The California Board of Chiropractic Examiners very much appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes you play a vital role and your objective performance will reflect well on the Board and the profession.

**Board of Chiropractic Examiners
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Section II

DEFINITIONS

There are a few terms used throughout this guide that have specific legal meaning. These are as follows:

“Negligence” is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractors would possess and use in similar circumstances.¹

If a chiropractor is a specialist, then “negligence” is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractic specialists (in the same specialty) would possess and use in similar circumstances.²

Under California law, a “single act of negligence” does not constitute grounds for discipline of a professional license, however “repeated acts of negligence” does constitute grounds for discipline of a professional license.

“Standard of Care” and “Standard of Practice” is a term used in evaluating the negligence of a chiropractor. The term “standard of care” and “standard of practice” are used interchangeably, however for purpose of this document and your report, please use the term “standard of care.” The standard of care requires that the chiropractor exercise that degree of skill, knowledge, and care ordinarily possessed by members of his or her profession under similar circumstances.³

“Gross Negligence” an extreme departure from the standard of care.⁴

“Incompetence” means an absence of qualification, ability or fitness to perform a prescribed duty or function. Incompetence is distinguishable from negligence in that one may be competent or capable of performing a given duty but was negligent in performing that duty. Thus, a single act of negligence may be attributable to remissness in discharging known duties, rather than incompetence respecting the proper performance.⁵

¹ California Civil Jury Instructions CACI 501, 2003.

² California Civil Jury Instructions CACI 502, 2003.

³ Barris v. County of Los Angeles, 20 Cal.4th 101, 83 Cal.Rptr.2d 145 (1999).

⁴ Kearl v. Board of Medical Quality Assurance, 189 Cal.App3d 1040 (1986); City of Santa Barbara v. Superior Court, 41 Cal.4th 747, 62 Cal.Rptr3d 527 (2007).

⁵ Kearl.

"Scope of Practice" refers to the range of services that can be provided by a chiropractor under the Chiropractic Initiative Act. The scope of practice is found in Sections 7 and 16 of the Initiative Act, Section 302 and 306 of the regulations, and in several California court decisions.

"Administrative Procedure Act" is the California law that governs all Board disciplinary cases against a chiropractor.

"Administrative Law Judge" or "ALJ" presides at all administrative hearings before the Board.

"Deputy Attorney General" or "DAG" is the attorney that represents the Board's Executive Officer who is the "complainant" in all disciplinary cases. DAGs are employed by the California Attorney Generals Office.

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Section III

GUIDELINES FOR EXPERT REVIEWERS

TEN MOST ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action and a stipulated agreement is not reached, you will be called upon to provide expert testimony before an ALJ. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid \$____ per hour for record review and a maximum of \$1200 per day for testimony at an administrative hearing. You will also be compensated for other expenses you may incur, (i.e., parking, postage or travel, if applicable) in accordance with state law.

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks following receipt of your billing for services rendered. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form that is required by the IRS and return it with the statement.

4. Can I be sued for expressing my opinion and if I am sued who will represent me?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert reviewers. If you are sued, either the Attorney Generals Office or outside counsel in the event of the conflict with the Attorney Generals Office will represent you.

5. Should I do research?

Yes, you should consult chiropractic texts and other authoritative reference materials that help define accepted standards and are encouraged to do so. However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

Generally, you are allowed 30 days. However, this varies depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed. In addition, if the case goes to a hearing, your report may be introduced into evidence.

8. Can you give me a copy of a sample report?

Yes, please see Section V.

9. What is the difference between negligence and gross negligence?

See Definitions Section for full explanation.

10. Which "community" do I use when applying standards?

For our purposes "community," as used when determining whether there has been a departure from the standard of care, is referring to the standard of care in terms of chiropractors in the same or similar circumstances.

INSTRUCTIONS

- A. Ensure that records, reports and materials provided for your review are kept confidential and secure.
- B. Look at the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with any subject, witness or patient.
- C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.
- D. Keep track of dates and hours spent reviewing.

- E. Do not mark on the copy of the records provided to you.
- F. Do not contact the Subject or patients.
- G. Do not discuss the case with outside third parties. You may use an office assistant or transcriptionist to assist you in the preparation of your report.
- H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the board.
- I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.
- J. Do not make a copy of the records.
- K. Do not destroy any of the materials provided to you.
- L. Remember to sign your opinion.
- M. Enclose a current curriculum vitae with your report. And, 14 days before the hearing, if is scheduled, you need to send an updated curriculum vitae to the DAG assigned to the case.
- N. When your review is completed, please contact the Board and arrange to deliver the report along with your statement for services, payee data record form, and current curriculum vitae. It is necessary for you to retain the records you reviewed until the case is final in the event you need to review them for either a meeting with the DAG or in preparation for a hearing.
- O. If you have questions or concerns, contact the Board's enforcement manager or Executive Officer.

IMMUNITY FROM LIABILITY and LEGAL REPRESENTATION

Civil Code Section 43.8 states, in pertinent part:

"... there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, ... professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review

committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts"

This statutory provision provides for immunity from civil liability for expert reviewers and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff. Failure to do so may result in a default decision being taken against you.

Section 306.2 of the regulations provides that the Board through the Attorney General's Office shall provide legal representation under specified conditions. This section reads:

"If a person, not a regular employee of the board, is hired or is under contract to provide expertise or to perform investigations for the Board of Chiropractic Examiners in the evaluation of the conduct of a licensee or administration of a board examination, and such person is named as a defendant in a civil action directly resulting from opinions rendered, statements made, investigations conducted or testimony given, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against that person. The Attorney General shall be utilized in those civil actions."

CONFIDENTIALITY

Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board, except of course in a report to the agency or in testimony after legal proceedings are instituted against a licensee of the Board.

As an expert reviewer to the Board, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and chiropractors involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. After your report is written, all materials received should be returned to the Board. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Chiropractic Board of Examiners is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of

violations of the Chiropractic Initiative Act of California, the California Code of Regulations, and other applicable laws and regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act (**Government Code § 11150 et seq.**). Its investigations are conducted pursuant to **Government Code sections 11180 through 11191.**

The Board's members are not involved in the investigatory process. The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing repeated negligence, gross negligence, or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, clearly excessive treatment or use of diagnostic procedures, altering or creating false records, sexual misconduct, criminal acts and other conduct that endangers the health, welfare, or safety of the public.

The purpose of the disciplinary process is not to punish as in the criminal justice system, but to ensure that quality chiropractic care is provided to the residents of the State of California and to preserve high standards of the practice.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by the Board to determine if an evaluation by an expert is necessary. If yes, Board staff sends the case to an expert reviewer who is qualified to render an opinion as to whether a departure from the standard of care occurred.

After the expert reviewer submits his or her report, the Board makes a determination if the matter should be submitted to the California Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to contest the charges.

In a majority of cases, the case is settled between the parties. However, if the case is not settled, a hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several weeks, depending upon the complexity of the case and the defense. Both sides may call expert witnesses to support their views. This makes it incumbent upon the expert reviewer to ensure the utmost care is taken when reviewing cases. The trier of fact (judge) hears evidence

against and for the subject chiropractor and renders a proposed written decision, that is submitted to the Board members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board reviewer who then makes a recommendation as to whether or not a full expert evaluation is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert reviewer at this point, will be contacted by the Board and will be asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the case file that includes all necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to information provided in the file. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether the facts as presented constitute unprofessional conduct. You are not asked to be an advocate for the Board, the chiropractor or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action. The Board is not interested in using your services to advocate a position, make an example of a licensee or punish a licensee. The Board only wants you to provide an objective evaluation so that it can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lesser enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be

called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General (DAG) assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the DAG in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the Board's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the DAG and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinions expressed by respondent's expert at hearing because oftentimes respondents' experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

The following are the primary laws that are used when making an expert reviewer is evaluating a case. However, you should be familiar as an expert in the field with all applicable laws relating to the practice of chiropractic.

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

- (a) Gross negligence;
- (b) Repeated negligent acts;
- (c) Incompetence;
- (d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
- (e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;
- (f) The administration to oneself, of any controlled substance, or the use of any

dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;

- (g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;
- (h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendere is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.
- (i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances
- (j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs or controlled substance;
- (k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
- (l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;
- (m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thereunder;
- (n) Making or giving any false statement or information in connection with the application for issuance of a license;
- (o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;
- (p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;
- (q) The participation in any act of fraud or misrepresentation;
- (r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;
- (s) The employment or use of persons known as cappers or steerers to obtain business;
- (t) The offering, delivering, receiving or accepting of any rebate, refund, commission,

- preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person;
- (u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.
 - (v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. **(Subdivision contains actual waiver language)**
 - (w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.
 - (x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted gross negligence, repeated acts of negligence, or incompetence. Often, it is difficult to distinguish which of these definitions fits the treatment rendered and often, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment.

Unlike gross negligence, repeated acts of negligence and incompetence, one "simple" departure from the standard of care is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is one act of simple negligence, repeated acts of negligence, gross negligence or incompetence. You may have situations

where the subject's conduct constituted both negligence and incompetence. You should explain this in your report.

The determinations are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of care within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct.

Section 316 of the regulations prohibits certain sexual acts both on the premises of a chiropractic business and with patients and other individuals. This section reads:

"(a) Every licensee is responsible for the conduct of employees or other persons subject to his supervision in his place of practice and shall insure that all such conduct in his place of practice conforms to the law and to the regulations herein.

(b) Where a chiropractic license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.

(c) The commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer or employee is unprofessional conduct and cause for disciplinary action. This conduct is substantially related to the qualifications, functions, or duties of a chiropractic license.

This section shall not apply to sexual contact between a licensed chiropractor and his or her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment."

In this area you are asked to assess, based upon the standard of care, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct based on California law and the facts presented in each case.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged statements or actions actually occurred. This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the doctor's conduct is true.

While some actions clearly constitute sexual misconduct, there are cases in which you will need to consider whether the conduct was appropriate because the doctor used an acceptable diagnostic or treatment technique. In these cases, your evaluation should

address whether the diagnostic or treatment technique is appropriate and whether the doctor used the diagnostic or treatment technique in an appropriate manner with the patient.

3. Excessive Treatment Violations.

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." The "local community" is the State of California. In this type of case, you are asked to state the standard of the community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. Excessive treatment may also constitute gross negligence or repeated acts of negligence. The insurance industry does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

4. General Unprofessional Conduct.

Section 317 states that a chiropractor may be disciplined for unprofessional conduct, which includes, **BUT IS NOT LIMITED TO** certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described, and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

Section IV

THE OPINION ITSELF

There are Sample Expert Reports appended to this booklet at Section V. Please refer to those when writing your report, but remember that they are guidelines only, and that your case and the contents of your report will necessarily differ.

A. Contents.

Your expert report should contain:

1. An accurate listing of the records and other documents sent to you to be reviewed. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.") For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.
2. The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:
 - a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.
 - b. State the standard of care for the treatment of such a patient. Remember to state the standard of care for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.
 - c. Specifically describe any departures from the standard of care and explain why. Each finding of a departure from the standard of care should be specifically described.

State your opinion as to whether the overall care of this patient constitutes no departure, an ordinary departure, an extreme departure, a lack of knowledge or

ability, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. You must also state the basis for each opinion.

B. Violation vs. Mitigation.

In writing your report, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of care and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or aggravating factors. The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential.

The primary focus in an expert review is whether there has been a departure from the standard of care of chiropractic, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of care may be relevant to a determination of the degree of departure, actual injury is not required to establish unprofessional conduct. Also, just because there is no injury does not mean there was no departure from the standard of care.

D. Evaluation and Credibility.

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened, while the subject may deny that it occurred. In those cases, your opinion should not include an assessment as to the subject and witnesses credibility, but if render an opinion as to whether certain conduct constituted unprofessional conduct you should state in your report whose statement you relied to reach that conclusion.

E. Assess the Standard of Care as of the Time of the Violation.

The standard of care of chiropractic is constantly evolving, and so it is

particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of care **AT THAT TIME**.

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert reviewer. If you are aware of the standards at the time the violation occurred through your education, training and experience, you may render an opinion on the case.

F. Objectivity.

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgments or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert reviewer should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses. However, you may review deposition testimony of patients or non-expert witnesses.

Section V

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Reviewer's Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert reviewer. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation.

You will be compensated at the rate of \$_____ per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, that is July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General.

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of \$_____ per hour.

C. Testimony at Hearing.

You will be compensated at the rate of \$_____ for a half day of testimony and \$_____ for a full day of testimony.

D. Miscellaneous Expenses.

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section VI

SAMPLE EXPERT OPINION

The attached sample expert reviewer reports are examples of the product the Board expects from your expert review. It is provided for purposes of reference as to form and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Guilt or Innocence: The expert reviewer's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of care, or demonstrate a lack of knowledge or ability. The trier of fact will determine guilt or innocence.

Judgmental or subjective comments: Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation. Avoid terms such as *"this guy is clearly incompetent"* or *"no one in his right mind would do..."*

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, expert reviewers should not let any information regarding malpractice filings, settlements or judgments affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Penalties: It is not the role of the expert reviewer to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: *"She was rude and unprofessional to the patient."* Instead, describe what the expected standard was, and how the chiropractor deviated from the standard.

Section VII

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness*. What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the *discovery* phase of the case. (Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.)

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an "administrative hearing," and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (direct and cross examination). The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet when an accusation is filed against a chiropractor is "*clear and convincing evidence to a reasonable certainty*". The standard that is used when a statement of issues (filed against an applicant) or citation is appealed is "preponderance of the evidence."

As with criminal trials, the Board presents its charges against the subject chiropractor first. The chiropractor or attorney can cross-examine each witness. Then the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. Each side has the opportunity to give an opening statement describing what they intend to prove and a closing statement summarizing what they have attempted to prove.

3. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire*. You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, dental education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the *standard of care in the chiropractic community* for the type of procedure involved in the case. The term "standard of practice" or standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of care. You also may need to address a charge of incompetence based on use of outmoded procedures. In some instances, you may be faced with a lack or inadequacy of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any were ordered, what instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of care as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of care. Was the treatment a simple departure or an extreme departure? For more information on this, see the Guidelines For Expert Reviewers in Section II.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony. You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.


4. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify the decision and adopt that.

MEMORANDUM

To: ENFORCEMENT COMMITTEE

Date: March 20, 2008

From: 
Brian J. Stiger
Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Telephone: (916) 263-5359

Subject: **Concept to Establish Special Investigator Positions**

This requests your consideration and approval of this concept to establish Special Investigator (Non-Peace Officer) positions for the Board of Chiropractic Examiners (BCE). This concept will require a permanent budget augmentation.

The BCE needs to take immediate and decisive measures to strengthen its enforcement program by improving complaint investigations, initiating compliance inspections, and actively monitoring chiropractors serving probation. Our goal is to complete complaint investigations within six months after the complaint is received. Achievement of this goal is dependent upon the investigative phase of the enforcement process.

The BCE is the only known healing arts board that out-sources its regulatory investigations to independent contractors. The Board has employed contract investigators for approximately eight years. The inherent limitations of contracting for investigative services, does not provide BCE management the necessary controls to properly oversee the investigators to ensure the quality, quantity, and timeliness of investigations. The BCE does not provide daily oversight to the contract investigators. Investigative methods, skills, and abilities vary significantly between each contractor. These inconsistencies lead to rework and unacceptable delays in complaint investigations. The BCE does not control the formal training or professional development the contract investigators receive, which creates a barrier for improving performance.

The BCE needs to ensure its field investigators are competent and meet minimal qualifications to fulfill the essential duties of an investigator. This concept employs civil servants that have met minimum qualifications as determined by the State Personnel Board and passed a civil service exam to demonstrate knowledge skills and abilities.

This concept envisions investigators housed in Northern and Southern California and a supervisor based at headquarters in Sacramento. The investigators will work out of fully equipped home offices and be assigned state vehicles. The investigators will be required to spend approximately 70% of their time in the field. The supervisor will be responsible for ensuring field staff are meeting performance expectations and complying with all state policies and regulations pertaining to state equipment.

I have provided the classification specifications for your review and consideration. If you have any questions, please contact me.

SPEC: SPECIALIST INVESTIGATOR I SERIES
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SPECIAL INVESTIGATOR I
Series Specification
(Established November 30, 2007)

SCOPE

This is a series specification that describes two classes that perform investigative work at the learner, worker, and journeyperson level.

Schem Code	Class Code	Class
VJ11	8553	Special Investigator I
VJ13	8563	Special Investigator I (Non-Peace Officer)

DEFINITION

BOTH CLASSES:

Under direction as a learner, worker, and journeyperson to make independent investigations to detect or verify suspected violations of laws, rules, or regulations; to locate and interview witnesses and persons suspected of violations; to obtain and present facts and evidence to support administrative action or prosecution; and to do other related work.

TYPICAL TASKS

BOTH CLASSES:

Makes/assists in making investigations to detect or verify suspected violations of provisions of laws, rules, or regulations; locates and interviews accused persons and witnesses and analyzes and evaluates their testimony; examines a variety of records to secure or verify information concerning suspected violations and violators; contacts and interviews individuals and representatives of business or governmental organizations; gathers, assembles, preserves, and reports facts, statements or affidavits, and other evidence for use in legal action; makes arrests; investigates complaints; investigates the character of applicants for specialized licenses or permits; investigates suspected misuse of license or permit privileges; arranges for the appearance of witnesses to present testimony in legal or administrative actions; swears to complaints; serves legal papers; appears as a witness at legal or administrative proceedings; interprets and explains the provisions of laws, rules, or regulations; cooperates with and secures the cooperation of Federal, State, and local law enforcement agencies; and prepares correspondence and reports of investigations and recommends action to be taken.

SPECIAL INVESTIGATOR I

Incumbents in this class perform peace officer duties and responsibilities in the accomplishment of their assignments in accordance with the California Penal Code, Section 830 et. seq., and Government Code, Sections 20391 and 20393.

MINIMUM QUALIFICATIONS

BOTH CLASSES:

Either I

Equivalent to graduation from college with:

1. A major in criminal justice, law enforcement, or criminology.
or
2. A minor (21 semester units or 31.5 quarter units) in criminal justice, law enforcement, or criminology with evidence that the following courses have been completed: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, philosophy of law, and an internship.

(Students in their senior year in college will be admitted to the examination, but they must produce evidence of graduation or its equivalent before they can be considered eligible for appointment.)

Or II

Equivalent to completion of two years of college with a major in police science, law enforcement, or criminology and two years' experience as a police officer/deputy sheriff performing preliminary investigative work as part of the regular enforcement activity.

Or III

One year of experience in the California state service in an investigation assignment in the classes of Management Services Technician, Range B, or Occupational Technician, Range B. Applicants who are being considered for Special Investigator I positions assigned "Peace Officer" status (as determined by California state law) must possess the educational equivalent to completion of the twelfth grade. (Applicants who have completed six months of service in Range B of the classes of Management Services Technician or Occupational Technician will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they can be considered eligible for appointment.)

Or IV

One year of experience in the California state service performing duties comparable to those of an Investigator Assistant or an Investigator Assistant (Non-Peace Officer). (Applicants who have completed six months of service in the class of Investigator Assistant or an Investigator Assistant (Non-Peace Officer) will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they can be considered eligible for appointment.)

Or V

Two years of experience in the California state service as a police officer performing investigation work as part of the regular enforcement activity.

Or VI

Experience: One year of experience as a police detective or as an investigator performing comparable investigative work in a public or private agency or in the armed services. and

Education: Equivalent to completion of the twelfth grade. (Additional qualifying experience may be substituted for the required education on a year-for-year basis.) Applicants who are being considered for Special Investigator I positions assigned "Peace Officer" status (as defined by California state law) must possess the educational equivalent to completion of the twelfth grade.

KNOWLEDGE AND ABILITIES

BOTH CLASSES:

Knowledge of: Investigation techniques and procedures; rules of evidence and court procedure; and laws of arrest, search and seizure, legal rights of citizens, and service of legal process.

Ability to: Interpret and apply laws and regulations to specific situations; gather and analyze facts; reason logically, draw valid conclusions, and make appropriate recommendations; good reading comprehension; participate effectively in investigations and interviews; communicate effectively; and establish and maintain effective working relationships.

SPECIAL PERSONAL CHARACTERISTICS

BOTH CLASSES:

Aptitude for investigation work; willingness as a learner to do routine or detailed work in order to learn the practical application of investigative principles; willingness to travel throughout assigned areas and to work long and unusual hours as required; demonstrated capacity for development as evidenced by work history, academic attainment, participation in school or other activities, or by well-defined occupational or vocational interests; tact; neat personal appearance; and ability to qualify for a fiduciary bond.

Minimum age for appointment: 18 years, except where employees are required to investigate cases involving alcoholic beverages.

PEACE OFFICER STANDARDS

SPECIAL INVESTIGATOR I

Citizenship Requirement: Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must either be a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U. S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

Felony Disqualification: Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for

by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.

Firearms Requirement: Persons convicted of a misdemeanor crime of domestic violence as defined in the amended Federal Gun Control Act of 1968 are disqualified from appointment to these classes.

Background Investigation: Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment.

Medical Requirement: Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

Psychological Requirement: Pursuant to POST Regulations 1002(a)(7) requires psychological screening of applicants for peace officer classifications.

Training Requirements: Under provisions of Penal Code Section 832, successful completion of training is required for peace officer status in this classification.

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Special Investigator I	10/21/81	11/30/07	--
Special Investigator I (Non-Peace Officer)	11/30/07	--	--

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SPEC: SUPERVISING SPECIAL INVESTIGATOR I SERIES
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SUPERVISING SPECIAL INVESTIGATOR I
Series Specification
(Established November 30, 2007)

SCOPE

This is a series specification that describes two classes at the first supervisory level that supervise a staff of Special Investigators performing investigative work.

Schem Code	Class Code	Class
VI80	8548	Supervising Special Investigator I
VI81	8549	Supervising Special Investigator I (Non-Peace Officer)

DEFINITION

BOTH CLASSES:

Under direction, either (1) in an assigned area, to direct a staff of Special Investigators I or Special Investigators I (Non-Peace Officer) in the performance of field investigations to detect or verify suspected violations of laws, rules, or regulations; or (2) in a headquarters office, to assist a superior in planning and directing a major investigation program, and to act for him/her in his/her absence; to make difficult investigations; and to do other related work.

DISTINGUISHING CHARACTERISTICS

BOTH CLASSES:

Employees in this class are typically first-line supervisors in charge of assigned area with a crew of Special Investigators. In addition to direct supervision, they may personally participate in difficult or complex investigations.

TYPICAL TASKS

BOTH CLASSES:

Trains, plans, organizes, and directs the work of a staff of Special Investigators I or Special Investigators I (Non-Peace Officer) in the investigation of suspected violations of provisions of laws, rules, or regulations; makes or directs the more difficult criminal investigations; makes inspections of the physical security of local offices and equipment and recommends any necessary actions; advises departmental personnel in methods of fraud detection; files complaints, prepares cases, and appears in court or in administrative

hearings; works with and secures the cooperation of Federal, State, and local law enforcement agencies; evaluates the performance of staff members, and takes appropriate action; assists a superior in planning and directing a major investigation program and acts for him/her in his/her absence; reviews and evaluates reports; makes or participates in more difficult or confidential field investigations; and prepares reports and correspondence.

SUPERVISING SPECIAL INVESTIGATOR I

Incumbents in this class performs peace officer duties and responsibilities in the accomplishment of their assignments in accordance with the California Penal Code, Section 830 et. seq., and Government Code, Sections 20391 and 20393.

MINIMUM QUALIFICATIONS

BOTH CLASSES:

Either I

One year of experience performing the duties of a Senior Special Investigator or a Senior Special Investigator (Non-Peace Officer) in the California state service.

Or II

Two years of experience performing the duties of a Special Investigator I, Range B, or a Special Investigator I (Non-Peace Officer), Range B, in the California state service.

Or III

Experience: Three years of experience in investigation work, at least two years of which involved complete responsibility for difficult and unusual cases. and

Education: Equivalent to completion of the twelfth grade.

(Additional qualifying experience may be substituted for the required education on a year-for-year basis.)

KNOWLEDGE, SKILLS, AND ABILITIES

BOTH CLASSES:

Knowledge of: Investigation techniques and procedures, and directing others in the performance of investigatory work; rules of investigatory work; rules of evidence and court procedure; principles of identification, preservation, and presentation of evidence; sources of information used in locating persons; laws of arrest, search and seizure, service of legal process, and the legal rights of citizens; interviewing techniques; duties of Federal, State, and local law enforcement agencies; interpreting and applying to specific cases the provisions of the laws, rules, or regulations enforced or administered; principles and techniques of personnel management and supervision and supervising a staff of investigators; and a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Skill in: Planning, organizing, and directing investigations.

Ability to: Direct others in the performance of investigatory work; interpret and apply to specific cases the provisions of the laws, rules, or regulations enforced or administered; supervise a staff of investigators; gather, analyze, and prepare effective evidence; dictate correspondence and prepare reports; communicate effectively; establish and maintain cooperative relations with Federal, State, and local law enforcement agencies; analyze situations accurately; think and act quickly in emergencies and adopt an effective course of action; and effectively promote equal opportunity in employment and maintain a work environment that is free of discrimination and harassment.

SPECIAL PERSONAL CHARACTERISTICS

BOTH CLASSES:

Willingness to work irregular hours and overtime in various locations throughout the State; tact; keenness of observation; good memory for names, faces, and incidents; and ability to qualify for a fiduciary bond.

PEACE OFFICER STANDARDS

SUPERVISING SPECIAL INVESTIGATOR I

Citizenship Requirement: Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must either be a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U. S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

Felony Disqualification: Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.

Firearms Requirement: Persons convicted of a misdemeanor crime of domestic violence as defined in the amended Federal Gun Control Act of 1968 are disqualified from appointment to these classes.

Background Investigation: Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment.

Medical Requirement: Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

Psychological Requirement: Pursuant to POST Regulations 1002(a)(7) requires psychological screening of applicants for peace officer classifications.

Training Requirements: Under provisions of Penal Code Section 832, successful completion of training is required for peace officer status in this classification.

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Supervising Special Investigator I	1/18/47	11/30/07	12/3/54
Supervising Special Investigator I (Non-Peace Officer)	11/30/07	--	--

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International Chiropractors Association of California

ICA of California
9700 Business Park Drive #305
Sacramento, CA 95827
800-275-3515

Proposal

Scope of Radiography in the Chiropractic Practice

As per Health and Safety Code Section 107111; A licentiate of the healing arts who is certified by an examining board in radiology recognized by the department shall be granted a certificate to supervise the operation of X-ray machines and to operate X-ray machines without restrictions.

The Board of Chiropractic Examiners authorizes properly trained and permitted chiropractors to utilize radiographic diagnostic procedures as follows:

- (1) The radiographic diagnostic aspect of Chiropractic practice shall include radiographic procedures of the Skull, Torso, Extremities and Spine.
- (2) Any licensed primary care provider who needs any x-ray of any of those regions of the body should be able to make a referral to a D.C.
- (3) All radiographs shall be of diagnostic quality.
- (4) X-ray is not to be used for therapeutic purposes. (§302)(a)(6)
- (5) Fluoroscopy examinations require a proper permit issued by the State Board of Radiologic Technology. To use fluoroscopic X-ray equipment, the operator must obtain additional education and training and pass an additional examination.
- (6) Staff employees of a Doctor of Chiropractic may be directed to take x-rays of a patient if they are in possession of a permit issued by the State Board of Radiologic Technology, but this permit is limited only to the taking of x-rays.
- (7) Radiographs shall be kept and available for review for a minimum of seven years or until a minor becomes 18 years of age, whichever is longer.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Enforcement Committee** of the **Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008

(Upon Conclusion of the Licensing Committee Meeting)

2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA**Call To Order****Approval of Minutes**

- March 27, 2008

PUBLIC COMMENT**Discussion and Possible Action**

- California Code of Regulations 306.1 Chiropractic Quality Review Panel (CQRP)

Discussion and Possible Action

- DRX 9000
- Laser Treatments

FUTURE AGENDA ITEMS**PUBLIC COMMENT****ADJOURNMENT****ENFORCEMENT COMMITTEE**

Hugh Lubkin, D.C., Chair
Judge James Duvaras, Retired

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

California Code of Regulations

§306.1. Chiropractic Quality Review Panel (CQRP).

The board shall establish a Chiropractic Quality Review Panel (CQRP) by county throughout California to hear cases referred by the board's Executive Officer.

(a) The authority and duties of CQRP's are:

- (1) To review chiropractic care provided by California licensees.
- (2) To act on all matters assigned to it by the board's Executive Officer.
- (3) To inspect all chiropractic records where reasonable cause exists to initiate a quality review.

(b) The composition and purpose of CQRP's are as follows:

- (1) Each panel shall be composed of three licensees appointed by the board.
- (2) Each panel member shall have at least 5 years experience practicing chiropractic in California.
- (3) Each panel member shall have no disciplinary action against their license.
- (4) The purpose of the CQRP is to review specific complaints and where appropriate to provide recommendations of continuing education and to strengthen aspects of the licensee's chiropractic practice.

(A) The "continuing education" recommendations are limited to specific continuing education seminars required by licensees.

(B) "Recommendations to strengthen aspects of a licensee's practice" will be a panel recommendation consistent with chiropractic standards of care in California.

(c) CQRP Hearing Procedures are as follows:

- (1) A closed panel hearing shall be conducted with a court reporter.
- (2) Any licensee required to appear before a panel will be notified by certified mail with a summary of the specific complaint together with supporting documents at least 30 days prior to the scheduled panel hearing.
- (3) When requested by the panel, licensees shall present to the panel all patient treatment records relevant to the specific complaint as required by California Code of Regulations, Title 16, Section 318.
- (4) The failure to present all requested patient records authorizes the panel to presume that the information in the records is adverse to the licensee.
- (5) The licensee may bring in any witnesses and documents to assist in responding to the complaint.

(6) The licensee may have counsel present during the panel hearing.

(7) The licensee will be given an adequate opportunity to respond to any questions by the panel.

(8) A postponement of the scheduled panel hearing may be granted by the board's Executive Officer upon a showing of good cause made at least 10 days prior to the scheduled hearing.

(9) The failure of a licensee to appear, without good cause, constitutes grounds for a recommendation to the Executive Officer for filing of a disciplinary action, or further investigation.

(d) CQRP report procedures:

(1) At the conclusion of the CQRP hearing the panel shall prepare a written report based on the evidence presented at the panel hearing with specific recommendations regarding the licensee and/or the licensee's practice.

Panel recommendations are the following:

(A) Continuing education seminars in related field;

(B) Recommendations that would strengthen aspects of licensee's chiropractic practice;

(C) Further investigation;

(D) Refer case to Office of Attorney General for preparation of formal disciplinary action;

(E) Close case with warning;

(F) Close case without warning;

(G) Dismiss complaint.

(2) The report and recommendations shall go directly to the board's Executive Officer.

(3) Any departure from accepted chiropractic procedures or practices shall be outlined in this written panel report with the recommendations from subsection (d)(1)(A)-(G) deemed necessary by a vote of a majority of the three member panel.

(4) All panel recommendations are subject to approval by the board's Executive Officer without further input from the licensee. The executive director shall prepare a final report, which shall include all approved recommendations, and send a copy of the final report to the licensee and panel members.

(5) The evidence presented at the panel hearing shall be submitted to the board office. All evidence used by the panel is admissible in any subsequent disciplinary proceeding against a licensee.

(e) The procedures for appealing the final CQRP report are as follows:

(1) The panel report is reviewed by the board's Executive Officer. After the review, the final report is sent to the licensee. The licensee has 30 days from receipt of the report to file a written appeal with the board.

(2) The appeal shall be considered by a committee of the board consisting of no more than three members.

(3) If the committee grants the appeal a final decision shall be prepared and returned to the Executive Officer for distribution to the licensee and panel members.

(4) If the board's committee denies the appeal, the final report becomes a final decision after 30 days.

(5) The licensee may appeal the final decision by filing a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5. The writ of mandate shall be filed in a Superior Court in Los Angeles, San Francisco, or Sacramento counties.

NOTE: Authority cited: Sections 1000-4(b), 1000-4(c), 1000-4(d), 1000-4(e), and 1000-10(a), Business and Professions Code (Chiropractic Initiative Act). Reference: Sections 1000-4(h), 1000-6(a), Business and Professions Code.

the licensee deviated from the standard of care. If the osteopathic board determines that there are grounds for discipline, it will refer the case to the attorney general.

Similarly, the speech-language board said it assigns priority to malpractice settlement notices based on the nature of the settlement claim and the degree of patient harm or risk to the public. Because complaints stemming from settlement claims require additional fact finding and investigation, the speech-language board forwards those cases to its investigators to obtain the pertinent facts. After the speech-language board's internal review of the facts or the conclusive opinion of an expert, if it appears that the licensee was negligent or deviated from an acceptable standard of care, the speech-language board refers the case to the attorney general for administrative disciplinary action. The physical therapy board processes malpractice settlement notifications to obtain and review the facts to determine whether there is evidence of a violation that meets the evidentiary standards for citation or other discipline.

In contrast, when processing a malpractice settlement notification, the chiropractic board does not obtain and review documentation or conduct investigations to determine if a violation occurred or refer the matter to an expert to determine if the licensee deviated from an acceptable standard of care. When the chiropractic board does not give priority to processing complaints requiring priority attention or process other complaints more diligently, it may be unnecessarily putting the public at risk.



For Years the Chiropractic Board Has Not Adhered to Its Own Regulation to Establish Chiropractic Quality Review Panels

Since June 1993 the chiropractic board's regulations have required it to establish chiropractic quality review panels (review panels) throughout California. According to the historical documentation, the board's original intent was to reduce the amount of time between complaint intake and resolution. The chiropractic board planned to refer certain complaints—those alleging minor violations of the initiative act that do not meet the criteria for referral to the attorney general for formal discipline—to a program in which a less formal review and early corrective action could possibly prevent the cases from moving down the path of formal discipline. The relevant board regulation states that the purpose of the review panels is to review specific complaints referred by the chiropractic board's executive officer and, when appropriate, provide recommendations of continuing education or other

The intended purpose of the review panels is to review specific complaints referred by the chiropractic board's executive officer and, when appropriate, provide recommendations of continuing education or other corrective actions to strengthen aspects of the licensees' chiropractic practice.

corrective actions to strengthen aspects of licensees' chiropractic practice. Nearly 15 years after adopting the regulation, the chiropractic board still has not established review panels.

The board's rule-making file shows that over the years, when changes in executive officers and board members occurred, so did priorities and efforts to establish the review panels. For example, the chiropractic board's then-executive officer had the chiropractic consultant who was hired in June 1995 develop the groundwork to implement the review panels. By March 1996 the chiropractic consultant had developed a list of qualified chiropractors to serve on the review panels to present to the board members for approval.

However, in April 1996, the chiropractic board hired a new executive officer and asked her to review the plans for establishing the review panels and to gather information from other boards that had established similar panels. In a report dated May 1996 the then-executive officer stated that the Medical Board of California (medical board) had encountered many problems with its review panels, including inconsistent complaint resolutions, lack of control by the medical board, and an increasingly costly review and appeal process that ultimately caused the medical board to eliminate its review panels. The then-executive officer's report also noted that, although the review panel program established by the California State Board of Pharmacy was more effective than that of the medical board, it was also very expensive. In addition, the then-executive officer stated in her report that some deputy attorneys general who had handled cases for the chiropractic board as well as other regulatory boards recommended that the chiropractic board use warning letters, cease-and-desist letters, and citations as a less costly and more efficient approach to informal discipline than the use of review panels. The then-executive officer recommended that the chiropractic board table implementation of the review panels, which the board did in June 1996.

In subsequent years board members and staff have attempted to change the regulation. Specifically, in October 2004, board members tried to amend the wording of the regulation from *shall* to *may*, which would have made the establishment of review panels discretionary. However, because of public opposition, board members tabled the discussion of the regulation change pending further review by the regulation committee. Shortly thereafter, the International Chiropractors Association of California (international association) submitted to the chiropractic board a detailed proposal for the establishment of the review panels. The proposal claimed the review panels could enhance public safety by providing faster complaint resolution and could reduce costs by eliminating the costs for investigators and experts. In March 2005 the chiropractic board ended its attempt to revise the regulation by submitting

a notice to not proceed to the Office of Administrative Law. According to the previous executive officer, the board member who had been working extensively with the proposed regulation at that time was absent from the April 2005 board meeting, and his term expired soon thereafter; as a result, the review panel discussion was never resolved.

The issue of the review panels arose again in December 2006 as a discussion item in a board meeting. The topic has been active since then, with the international association submitting proposals in February 2007 and June 2007 to modify the regulations and the governor appointing a representative from the international association as a member of the chiropractic board in February 2007. Moreover, it is clear from the international association's proposals that it seeks to remove control over the complaint review and discipline processes from the chiropractic board as a state agency and place that control with the individual board members and other licensees. Specifically, the latter proposal includes the formation of a six-member chiropractic review committee, whose members would be appointed by the Legislature. The chiropractic review committee would oversee the review panels and assign them complaints filed against chiropractors. After conducting a hearing, the review panels would submit their recommendations to the chiropractic review committee for review rather than to the chiropractic board's executive officer as the regulations currently state. Under the international association's proposal, the board's executive officer would merely perform administrative duties for the chiropractic review committee.

The chiropractic board's current executive officer does not believe the review panels are the right solution for the board. In September 2007 he prepared a memo to the chair of the board's enforcement committee responding to the question of whether the chiropractic board should move forward with implementing the review panels. In the memo he recommends that the board repeal the regulation related to the review panels. He supports this recommendation by citing concerns with the cost-effectiveness of review panels, the potential for the review panels to make rulings that are inconsistent with the board's enforcement policies, and the potential for the review panels to be viewed as a peer-review system. Moreover, at the November 2007 board meeting, the executive officer noted that the board has considered only the options of using the chiropractic consultant or the review panels for the processing of complaints and that other options need to be considered.

As part of our survey of three other regulatory boards with similar enforcement programs, we specifically asked whether they require the establishment of review panels. None of the boards we surveyed

At the November 2007 board meeting the executive officer noted that the board has considered only the options of using the chiropractic consultant or the review panels for the processing of complaints and that other options need to be considered.

Although we recognize that the issues surrounding the review panels are not simple, it is clear that the board must take some action to remedy its noncompliance with its regulation.

are currently using review panels. The osteopathic board and the speech-language board told us that they do not use review panels or other similar review processes. Specifically, the osteopathic board stated that it relies instead on the case reviews by its expert consultants. The physical therapy board stated that it is currently in the process of preparing to implement a quality control program and that its planned process will include board members reviewing closed cases to ensure timely resolutions and consistency in the process.

We recognize that the issues surrounding the review panels are not simple, but it is clear that the chiropractic board must take some action to remedy its noncompliance with its regulation. In determining what that action might be, we believe the board must consider its complaint review process more broadly. As we noted in previous sections of this chapter, the chiropractic board has not developed standard procedures or required management oversight of its complaint process. Therefore, by instituting a stronger system for reviewing and taking action on complaints, the board will be better able to determine what other processes it should add to complement its ability to promptly and appropriately respond to complaints about chiropractors.

The Chiropractic Board's Recently Vacant Chiropractic Consultant Position Leaves a Gap in Its Available Technical Expertise

As noted in the Introduction, the chiropractic consultant position, under the supervision of the executive officer, provided chiropractic expertise to help staff review complaints against and evaluate the professional conduct of licensees who may have violated chiropractic laws and regulations. During our review, we found that the chiropractic board's enforcement process and its staff relied heavily on the chiropractic consultant to complete its reviews and make decisions on complaints and punishment when violations occurred. Because the chiropractic consultant position has been vacant since August 10, 2007, we asked the executive officer to provide his perspective on the impact to operations, especially to enforcement, licensing, and continuing education, of not having technical expertise on staff. The executive officer explained that because of the current budget situation, the chiropractic board is not planning to fill the vacant chiropractic consultant position. He also said that based on the chiropractic board's initial assessment of the enforcement program and the chiropractic consultant position in particular, it had concerns about the duties and use of the position and did not plan to fill the vacancy until a job analysis was conducted. At the same time, board members expressed concerns about filling the position before instituting a significant change in duties.

International Chiropractors Association of California

ICA of California
9700 Business Park Drive #305
Sacramento, CA 95827
800-275-3515

April 2008

§306.1 Chiropractic Review Committee

The board shall establish a Chiropractic Review Committee to assist the board's executive director. The peer review committee shall evaluate complaints against chiropractic doctors that are referred to it by the board. The Chiropractic Review Committee shall assist the Executive Officer on matters assigned to them.

The Board, through their executive officer and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct. This includes acts or omissions evidencing, negligence or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, excessively treating patients, altering or creating false records, sexual misconduct, criminal acts and committing ethical violations. The discipline for practitioners committing such act or omissions serves to protect the public from unsafe and, unethical practitioners.

The Committee will be comprised of a chairman and a minimum of three (3) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause.

The Chiropractic Review Committee may recommend to the Executive Officer:

1. Continuing education recommendations for specific education seminars to improve the licensees' performance.
2. Recommendations to strengthen aspects of a licensee's practice consistent with chiropractic standards of care in California.
3. Letter of Admonishment
4. Citation & Fines
5. Citation / Order of Abatement
6. Further investigation
 - a) Use of investigators
 - b) Use of expert reviewers
7. Formal Disciplinary Process

The Executive Office may also have a Chiropractic Review Committee Member serve as an expert in an Administrative Law Hearing.

Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not:

- a. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties.

Compensation and expenses shall be paid as an "Expert Reviewer."

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-11574

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APRIL 7, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 06-01678 CV-JTC-1

NORTH AMERICAN MEDICAL CORPORATION,
ADAGEN MEDICAL INTERNATIONAL, INC.,
Georgia corporations,

Plaintiffs-Appellees,

versus

AXIOM WORLDWIDE, INC.,
a Florida corporation,
JAMES GIBSON, JR.,
NICHOLAS EXARHOS,
residents of Florida,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(April 7, 2008)

Before ANDERSON, BLACK and HILL, Circuit Judges.

ANDERSON, Circuit Judge:

Defendants-Appellants Axiom Worldwide, Inc. ("Axiom"), James Gibson, Jr., and Nicholas Exarhos appeal the district court's grant of a preliminary injunction in favor of the Plaintiffs-Appellees, North American Medical Corporation ("NAM") and Adagen Medical International, Inc. ("Adagen").¹ The district court enjoined the Defendants-Appellants from engaging in certain alleged acts of trademark infringement and false advertising. We now affirm the district court's order in part and vacate and remand it in part.

I. STANDARD OF REVIEW

We will reverse a grant of a preliminary injunction only if the district court abused its discretion. Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246 (11th Cir. 2002). We review the district court's findings of fact under a clearly erroneous standard, noting that a finding of fact is clearly erroneous only when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Id. (quoting Univ. of Ga. Athletic Ass'n v.

¹ Defendant-Appellant Ren Scott originally participated in this appeal as well, but we previously granted a joint motion to voluntarily dismiss him from the case after he reached a settlement agreement with the Plaintiffs-Appellees. Accordingly, we need not address Scott's argument that the district court lacked personal jurisdiction over him.

Laite, 756 F.2d 1535, 1543 (11th Cir.1985)). We review the district court's conclusions of law de novo, "understanding that '[a]pplication of an improper legal standard . . . is never within a district court's discretion.'" Id. (quoting Am. Bd. of Psychiatry & Neurology, Inc. v. Johnson-Powell, 129 F.3d 1, 2-3 (1st Cir. 1997)).

II. BACKGROUND

NAM designs and manufactures physiotherapeutic spinal devices, commonly known as traction devices, which are used, for example, to treat lower back pain. Adagen is an authorized distributor of NAM's devices. Axiom, a competitor of NAM's, manufactures a physiotherapeutic device known generally as the DRX 9000. Gibson and Exharhos are, respectively, the president and vice president of Axiom. In the present lawsuit, NAM and Adagen allege that Axiom engaged in unfair competition by infringing NAM's trademarks and by issuing false advertising regarding the DRX 9000.

The trademark infringement claims stem from Axiom's use of two of NAM's registered trademarks: the terms "Accu-Spina" and "IDD Therapy."

Axiom included these terms on its website within meta tags.² Although Axiom's website never displayed NAM's trademarked terms to visitors and never mentioned NAM or NAM's products, Axiom nonetheless included the terms within its meta tags to influence Internet search engines. For instance, evidence in this case indicated that, before Axiom removed these meta tags from its website, if a computer user entered the trademarked terms into Google's Internet search engine, Google listed Axiom's website as the second most relevant search result. In addition, Google provided the searcher with a brief description of Axiom's website, and the description included these terms and highlighted them.³

The false advertising claims stem from certain statements that Axiom made about its product, the DRX 9000. In particular, two representations by Axiom are

² Meta tags consist of words and phrases that are intended to describe the contents of a website. These descriptions are embedded within the website's computer code. Although websites do not display their meta tags to visitors, Internet search engines utilize meta tags in various ways. First, when a computer user enters particular terms into an Internet search engine, the engine may rank a webpage that contains the search terms within its meta tags higher in the list of relevant results. Second, when a particular webpage is listed as a relevant search result, the search engine may use the meta tags to provide the searcher a brief description of the webpage. See Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp., 174 F.3d 1036, 1045 (9th Cir. 1999).

³ Incidentally, Axiom makes a brief, conclusory argument that no evidence exists to establish that the meta tags affected the search results. We disagree. The evidence indicates that nowhere in Axiom's website do NAM's two trademarked terms appear (e.g., in comparative advertising). Rather, the terms appear only in Axiom's meta tags. We cannot conclude that the district court's implied finding of a causal relationship is clearly erroneous.

relevant to this appeal.⁴ First, Axiom represented in various ways that an affiliation exists between NASA and Axiom or between NASA and the DRX 9000. Second, Axiom asserted in advertisements that the DRX 9000 is FDA “approved.”

The district court issued a preliminary injunction in favor of NAM and Adagen, prohibiting Axiom from using NAM’s trademarks within meta tags and prohibiting Axiom from making the challenged statements about the DRX 9000. Among other things, the district court specifically found that Axiom’s use of NAM’s trademarks created a likelihood of confusion, and the court also found that Axiom’s advertising statements are literally false and material to consumers’ purchasing decisions.

III. DISCUSSION

At the outset, we note that a district court may grant a preliminary injunction only if the movant establishes the following: “(1) a substantial likelihood of success on the merits of the underlying case, (2) the movant will

⁴ A third representation by Axiom, that Axiom patented the DRX 9000 or any portion or feature thereof, was also deemed literally false by the district court. Because Axiom’s brief on appeal fails to challenge this aspect of the district court’s ruling, however, Axiom has waived the issue. This circuit has consistently held that issues not raised on appeal are abandoned. See, e.g., Greenbriar, Ltd. v. City of Alabaster, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989).

suffer irreparable harm in the absence of an injunction, (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued, and (4) an injunction would not disserve the public interest.” Johnson & Johnson, 299 F.3d at 1246-47. Axiom challenges the district court’s order on multiple grounds. First, Axiom argues that NAM and Adagen failed to establish a substantial likelihood of success on the merits of their trademark infringement claims. Specifically, Axiom urges that its use of NAM’s trademarks in invisible meta tags is not a “use in commerce” and does not create a likelihood of confusion. Second, Axiom argues that NAM and Adagen also failed to establish a substantial likelihood of success on the merits of their false advertising claims. Specifically, Axiom asserts that its advertising statements are not literally false and are not material to consumers’ purchasing decisions. Third and finally, Axiom argues that, even assuming NAM and Adagen are likely to succeed on the merits of these unfair competition claims, the district court erred by categorically presuming that any plaintiff with a viable unfair competition claim will always suffer irreparable harm in the absence of a preliminary injunction. We address each point in turn.

A. Likelihood of Success on the Merits of the Trademark Infringement Claims

Because Axiom's use of NAM's trademarks constitutes a "use in commerce" in connection with the advertisement of goods, and because the district court did not clearly err in its factual finding that a likelihood of confusion exists, NAM and Adagen demonstrated a likelihood of success on the merits of their trademark infringement claims. Regarding trademark infringement, the Lanham Act provides, in relevant part, as follows:

(1) Any person who shall, without the consent of the registrant –

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . .

shall be liable in a civil action by the registrant for the remedies hereinafter provided.

15 U.S.C. § 1114(1)(a) (2006). To prevail on a claim of trademark infringement in this case, plaintiffs must establish: (1) that they possess a valid mark, (2) that the defendants used the mark, (3) that the defendants' use of the mark occurred "in commerce," (4) that the defendants used the mark "in connection with the sale . . . or advertising of any goods," and (5) that the defendants used the mark in a manner likely to confuse consumers. See 1-800 Contacts, Inc. v. WhenU.com, Inc., 414 F.3d 400, 406-07 (2d Cir. 2005); People for Ethical Treatment of

Animals v. Doughney, 263 F.3d 359, 364 (4th Cir. 2001).

Axiom does not challenge the validity of NAM's marks, nor does Axiom dispute that its use of NAM's trademarks affects interstate commerce.⁵ Thus, although Axiom purports to challenge whether its placing of NAM's trademarks in its meta tags is a "use in commerce" and whether such use is likely to confuse consumers, Axiom's arguments actually focus only on the second, fourth, and fifth elements. Moreover, because Axiom separates its "use" challenge from its "likelihood of confusion" challenge, we first address the second and fourth elements together (i.e., whether there was a "use . . . in connection with the sale . . . or advertising of any goods"), and we then address the fifth element (i.e., whether such use was in a manner "likely to confuse consumers").

1. Use in Commerce in Connection with the Sale or Advertising of Any Goods

Axiom briefly argues that placing a competitor's trademarks within meta tags, which consumers never view, does not constitute a "use" as required to find trademark infringement under the Lanham Act. However, we readily conclude that the facts of the instant case do involve a "use" as contemplated in the Lanham

⁵ The Lanham Act defines "commerce" broadly for jurisdictional purposes as "all commerce which may lawfully be regulated by Congress." 15 U.S.C. § 1127 (2006); see also Bosely Med. Inst., Inc. v. Kremer, 403 F.3d 672, 677 (9th Cir. 2005)(describing "use in commerce" as a "jurisdictional predicate"); Planetary Motion, Inc. v. Techsplosion, Inc., 261 F.3d 1188, 1194-95 (11th Cir. 2001) (same).

Act – that is, a use in connection with the sale or advertisement of goods. In deciding whether Axiom has made an infringing “use,” we focus on the plain language of § 1114(1)(a), which, as noted above, requires a “use in commerce . . . of a registered mark in connection with the sale . . . or advertising of any goods.” 15 U.S.C. § 1114(1)(a). The facts of the instant case are absolutely clear that Axiom used NAM’s two trademarks as meta tags as part of its effort to promote and advertise its products on the Internet. Under the plain meaning of the language of the statute, such use constitutes a use in commerce in connection with the advertising of any goods. Accordingly, we readily conclude that plaintiffs in this case have satisfied that (1) they possessed a valid mark, (2) that the defendant used the mark, (3) that the defendant’s use of the mark occurred “in commerce,” and (4) that the defendant used the mark “in connection with the sale . . . or advertising of any goods.”

In an effort to avoid the foregoing plain meaning of the statutory language, Axiom places its sole reliance on the Second Circuit’s 1-800 Contacts case. In that case, whenever a consumer who had installed the defendant’s computer program clicked on or searched for the plaintiff’s website address, the program generated on the consumer’s screen not only the website sought (e.g., plaintiff’s), but also a second window displaying pop-up ads for the defendant’s alternative,

competing products. 414 F.3d at 404-05. The Second Circuit ultimately held, as a matter of law, that such use of the web address is not a “use in commerce.” Id. at 403.

In so holding, the Second Circuit emphasized that the defendant did not use plaintiff’s trademark, but rather used its website address, which differed slightly from the mark. Id. at 408-09. Indeed, the court explicitly declined to express an opinion on the appropriate result if defendant had in fact used plaintiff’s trademark. Id. at 409 n.11. Even more crucial to the Second Circuit’s holding, the court emphasized repeatedly the fact that the defendant never caused plaintiff’s trademarks to be displayed to a consumer. Id. at 408-410. The court explained that the defendant used plaintiff’s web address merely in the internal directory of its proprietary software, which was “inaccessible to both the C-user and the general public.” Id. at 409. Explaining the significance of the fact that the defendant never caused plaintiff’s trademark to be displayed to the consumer, the court stated that defendant’s use of plaintiff’s “website address in the directory does not create a possibility of visual confusion with 1-800’s mark.” Id.

In rejecting Axiom’s invitation to rely on 1-800 Contacts, we initially note that the above two key facts are not present in the case before us. First, unlike the defendant in 1-800 Contacts, Axiom in the instant case did use NAM’s two

trademarks in its meta tags; it did not merely use NAM's unprotected website address. Second, and again unlike in 1-800 Contacts, the defendant-Axiom in this case did cause plaintiff's trademark to be displayed to the consumer in the search results' description of defendant's site.⁶ Thus, the facts of the instant case stand in stark contrast to those in 1-800 Contacts, and Axiom's reliance on the Second Circuit's opinion is therefore misplaced.

Furthermore, to the extent the 1-800 Contacts court based its "use" analysis on the fact that the defendant did not *display* the plaintiff's trademark, we think the Second Circuit's analysis is questionable. Although we believe that the absence of such a display is relevant in deciding whether there is a likelihood of confusion, we believe that, when the analysis separates the element of likelihood of confusion from the other elements, this fact is not relevant in deciding whether there is a use in commerce in connection with the sale or advertising of any goods. Because the Second Circuit did separate its analysis in this manner, and did purport not to address the likelihood of confusion issue, see id. at 406, its reliance on the fact that there was no display of the plaintiff's trademark (and thus no

⁶ As described more fully below, when a consumer in this case entered NAM's trademarks into a search engine, the search results displayed Axiom's website along with a description thereof, which description included NAM's trademarks in a manner likely to confuse consumers and suggest some relationship between Axiom and NAM.

possibility of confusion) undermines the persuasiveness of its analysis of the separate elements of use in commerce in connection with the sale or advertising of any goods.

In sum, we conclude that Axiom's reliance on the Second Circuit decision in 1-800 Contacts is misplaced.⁷ We conclude that the plain meaning of the statutory language clearly indicates that Axiom's use of NAM's trademarks as meta tags constitutes a "use in commerce . . . in connection with the sale . . . or advertising of any goods" under the facts of this case. Thus, we turn to the fifth, and final, element that plaintiffs' must establish – that such use was "likely to cause confusion."

2. Likelihood of Confusion

⁷ We also note that several cases, including 1-800 Contacts, refer to 15 U.S.C. § 1127 with respect to the definition of "use in commerce" in the infringement context. See, e.g., 1-800 Contacts, 414 F.3d at 407, 409. However, a leading treatise on trademarks notes that § 1127 "defines the kind of 'use' needed to acquire registerable trademark rights – not to infringe them." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:11.50 (4th ed. 2003). McCarthy explains that § 1127 harked back to the common law "affixation" requirement, a formalistic prerequisite to achieving technical trademark status. *Id.* By contrast, McCarthy observes that § 1114(1) merely requires that a plaintiff's proof of infringement establish a use in commerce "in connection with the sale . . . or advertising of any goods." *Id.* In any event, McCarthy notes that the cases that inappropriately cite § 1127 in the context of an infringing "use" analysis do not apply that section's affixation limitations. *Id.* Finally, McCarthy cites Ninth Circuit opinions as correctly construing § 1127. *Id.* (citing, for example, Bosely Med. Inst., Inc. v. Kremer, 403 F.3d 672 (9th Cir. 2005)). In Kremer, the Ninth Circuit noted that § 1127 is expressly prefaced with the caveat: "unless the contrary is plainly apparent from the context." 403 F.3d at 677. Thus, the Kremer court held that the appropriate issue was whether the use was "in connection with the sale of goods or services." *Id.*; see also Playboy Enters., Inc. v. Netscape Commc'ns Corp., 354 F.3d 1020, 1024 n.11 (9th Cir. 2004).

The district court's finding that a likelihood of confusion exists is not clearly erroneous. Seven factors are relevant when determining whether a likelihood of confusion exists:

(1) the strength of the plaintiff's mark; (2) the similarity between the plaintiff's mark and the allegedly infringing mark; (3) the similarity between the products and services offered by the plaintiff and defendant; (4) the similarity of the sales methods; (5) the similarity of advertising methods; (6) the defendant's intent, e.g., does the defendant hope to gain competitive advantage by associating his product with the plaintiff's established mark; and (7) actual confusion.

Alliance Metals, Inc., of Atlanta v. Hinely Indus., Inc., 222 F.3d 895, 907 (11th Cir. 2000). "The findings as to each factor, and as to the ultimate conclusion regarding whether or not a likelihood of confusion existed, are subject to the clearly erroneous standard of review." Frehling Enters., Inc. v. Int'l Select Group, Inc., 192 F.3d 1330, 1335 (11th Cir. 1999).

The district court expressly acknowledged the foregoing factors, but it made an explicit finding only with respect to the ultimate conclusion that there was a likelihood of confusion. Regarding that issue, Axiom's brief on appeal did not challenge the district court's implied findings with respect to any of the subsidiary factors (i.e., the foregoing seven factors). Rather, Axiom challenged only: (1) the district court's implied finding that Axiom's use of NAM's two trademarks as

meta tags caused the Internet search results at issue,⁸ and (2) the district court's reliance on Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036 (9th Cir. 1999), and Promatek Industries, Ltd. v. Equitrac Corp., 300 F.3d 808 (7th Cir. 2002), with respect to the nature of meta tags and search engines. Axiom argues that those opinions erroneously misled the district court to find a likelihood of confusion; Axiom contends that its use of the meta tags was instead analogous to a store placing its own generic brand next to a brand name product on the store's shelf. Because Axiom has not challenged the district court's implied findings with respect to the subsidiary factors, any such challenge is deemed abandoned. Indeed, it is apparent that the marks are not only similar, but identical; Axiom's meta tags precisely mimic NAM's "IDD Therapy" and "Accu-Spina" trademarks. Axiom concedes that it is a direct competitor of NAM. It is also apparent that Axiom intended to gain a competitive advantage by associating its product with NAM's trademark. Finally, the litigation on appeal has proceeded on the assumption that there would be a likelihood of confusion, unless Axiom's arguments about the nature of meta tags and search engines (i.e.,

⁸ As noted above, we summarily reject this argument. See supra note 3. NAM's trademarks appeared in the Google search result as part of the description of Axiom's website. Because on this record the only possible cause for this is Axiom's use of the trademarks as meta tags, we readily conclude that the district court was not clearly erroneous in its implicit finding that the meta tags caused the search result and thus the likelihood of confusion.

Axiom's challenge to Brookfield and Promatek) prevailed.

Therefore, we address Axiom's challenge to Brookfield and Promatek. In the leading case on this issue, the Ninth Circuit concluded that the Lanham Act bars a defendant from including in its meta tags a competitor's trademark or confusingly similar terms. Brookfield, 174 F.3d at 1065. Accordingly, the Brookfield court enjoined one online video store, West Coast, from using in its meta tags the trademark (and similarly confusing terms) of a competing online video store, Movie Buff. Id. at 1066-67. Despite its ultimate conclusion, the Brookfield court conceded that even when a consumer who enters a company's trademark into a search engine sees a list displaying a competitor's website in addition to the trademark holder's website, the consumer will often be able to find the particular website he is seeking by simply scanning the list of results. Id. at 1062. The court also acknowledged that even if the web user chooses the competitor's website from the list, assuming the allegedly infringed trademark is not actually displayed by the competitor, "it is difficult to say that a consumer is likely to be confused about whose site he has reached or to think that [the plaintiff] somehow sponsors [the competitor's] web site." Id. Nevertheless, the Brookfield court concluded that the competitor's use of the trademark "in metatags will still result in what is known as initial interest confusion." Id. That is, "[a]lthough

there is no source confusion in the sense that consumers know they are patronizing [the competitor] rather than [the plaintiff], there is nevertheless initial interest confusion in the sense that, by using [the trademark] to divert people looking for [the plaintiff's] web site, [the competitor] improperly benefits from the good will that [the plaintiff] has developed in its mark.” Id.

In the other case relied upon by the district court, the Seventh Circuit faced facts similar to those in Brookfield and agreed with the Brookfield court's analysis. Promatek, 300 F.3d at 810-13. Other courts, however, have criticized various aspects of the Brookfield opinion. See, e.g., 1-800 Contacts, 414 F.3d at 410-11; Playboy Enters., Inc. v. Netscape Commc'ns Corp., 354 F.3d 1020, 1034-36 (9th Cir. 2004) (Berzon, J., concurring); J.G. Wentworth, S.S.C. Ltd. P'ship v. Settlement Funding LLC, No. 06-0597, 2007 WL 30115, at *6-*7 (E.D. Pa. Jan. 4, 2007); see also J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 25:69 (4th ed. 2003) (discussing meta tags, initial interest confusion, and criticisms of the Brookfield court's approach).

Like the Brookfield and Promatek courts, we ultimately conclude that a company's use in meta tags of its competitor's trademarks may result in a likelihood of confusion. However, because NAM and Adagen have demonstrated

a likelihood of actual *source* confusion,⁹ we need not decide, as those courts did, whether initial interest confusion alone may provide a viable method of establishing a likelihood of confusion. Unlike those courts, we are not faced with a situation where the trademarks are used without being displayed to consumers.

In Brookfield and Promatek, consumers who entered the plaintiff's trademarks into a search engine saw a list displaying the competitor's website in addition to the trademark holder's website *without* any other indication from the search results that the competitor's website is sponsored by the plaintiff or related to the plaintiff's trademarks. In contrast, in the instant case, when consumers entered NAM's trademarks into a search engine, the search results not only displayed Axiom's competing website, but they also included a brief description of Axiom's website, which description included and highlighted NAM's trademarked terms. That is, the evidence in the instant case specifically shows that if consumers searched with Google for the terms "IDD Therapy" and "Accu-Spina," the first listed result was a legitimate website sponsored by NAM, the

⁹ "Source confusion" exists because consumers are likely to be confused as to whether Axiom's products have the same source or sponsor as NAM's or whether there is some other affiliation or relationship between the two. As has been noted by the Eighth Circuit, "[i]f the products are closely related, and it is reasonable for consumers to believe the products come from the same source, confusion is more likely. Davis v. Walt Disney Co., 430 F.3d 901, 904 (8th Cir. 2005).

owner of these trademarks, and the second entry in the search results was Axiom's competing website. Furthermore, and in contrast to Brookfield and Promatek, as noted above, the search results not only listed the competitor's (i.e., Axiom's) web address, but they also included a brief description of the Axiom's site, and this description included and highlighted both of NAM's trademarked terms, "IDD Therapy" and "Accu-Spina," in addition to Axiom's competing products.

Consumers viewing these search results would be led to believe that Axiom's products have the same source as the products of the owner of the "IDD Therapy" and "Accu-Spina" trademarks, or at least that Axiom distributed or sold all of the products to which the brief description referred, or that Axiom was otherwise related to NAM. This, of course, is misleading to the consumer because Axiom is not related in any way to NAM, nor does Axiom distribute or sell the products of NAM. Moreover, there was nothing in Axiom's website itself to disabuse consumers of the notion (suggested by the Google search) that there is some relationship between Axiom and NAM. In other words, if consumers accessed Axiom's website after viewing the Google search results, they would be told all about Axiom's products but would be met with utter silence with respect to NAM's products. For example, there was no comparative advertising in Axiom's website which would have made clear to consumers that NAM's and Axiom's

products are competing items. Thus, the factual situation in the instant case is that Axiom's use of the meta tags caused a likelihood of actual consumer confusion as to source.

The instant case is more like Playboy Enterprises, Inc. v. Netscape Communications Corp., 354 F.3d 1020 (9th Cir. 2004), than Brookfield or Promatek. In Playboy, the defendant, Netscape, sold advertisements to competitors of Playboy and then caused its search engine to pop up banner ads of its advertisers. Playboy, 354 F.3d 1023. The ads appeared when the consumer-searcher typed in the search terms "Playboy" and/or "Playmate," which are trademark terms owned by Playboy. Id. The search engine operated in this manner by using "keying" words in its software. Id. at 1022-23. A competitor's ad could be keyed to pop up in a banner ad along the margin of the search result when the searcher entered "Playboy" and/or "Playmate." Id. at 1023. Thus, the keying words operated in hidden fashion, much like the meta tags in this case. Because the banner ads appeared immediately after the searcher typed in the Playboy trademarks, and invited the user to "click here," id. at 1023, and especially because the banner ads did not clearly identify a source (i.e., the sponsor of the ad), id. at 1025 n.16, 1030, the user was likely to be confused regarding the sponsorship of the unlabeled advertisements. Thus, the Playboy

case involved some actual confusion as to source, unlike the situation in Brookfield where there was never any confusion as to source or affiliation. The instant case is more like Playboy than Brookfield. We note, however, that the source confusion in the instant case is considerably more pronounced than in Playboy. In Playboy, there was no explicit representation of a relationship between the source of the ad and Playboy, while there is an explicit representation in this case of some relationship between Axiom and NAM.

Judge Berzon wrote a concurring opinion in Playboy in which he highlighted this distinction from Brookfield. Id. at 1035-36 (Berzon, J., concurring). Judge Berzon criticized Brookfield, arguing that it involved merely a distraction of a potential customer with another choice in a situation in which the customer was never confused as to source. Id. Rather, the potential customer merely was provided an opportunity for another choice, which clearly was not the sponsor of the original search. Id. Such distraction, Judge Berzon pointed out, was very much like the product placement in a department store. Id. at 1035. When a customer walks in, asks for the Calvin Klein section, and is directed to the second floor, no one thinks that there is a trademark infringement because the store has placed its own (or another competitor's) clothing line in a more prominent place as a distraction. Id.

Because Axiom's use of NAM's trademarks as meta tags caused the Google search to suggest that Axiom's products and NAM's products had the same source, or that Axiom sold both lines, or that there was some other relationship between Axiom and NAM, Axiom's use of the meta tags caused a likelihood of actual source confusion. Thus, the instant case is very different from the product placement in a department store. This case is also very different from Brookfield where there was never source confusion. Finally, the instant case is not subject to the criticism leveled by Judge Berzon.

For the foregoing reasons, and under the particular factual circumstances of this case, we cannot conclude that the district court's finding of a likelihood of confusion is clearly erroneous.¹⁰ Because the district court in this case was not clearly erroneous in finding (1) that plaintiffs possessed valid trademarks; (2) that defendants used those marks, (3) in commerce, (4) in connection with the

¹⁰ We note that our holding is narrow, and emphasize what kind of case and what kind of facts are *not* before us. This is not a case like Brookfield or Promatek where a defendant's use of the plaintiff's trademark as a meta tag causes in the search result merely a listing of the defendant's website along with other legitimate websites, without any misleading descriptions. This is also not a case where the defendant's website includes an explicit comparative advertisement (e.g., our product uses a technology similar to that of a trademarked product of our competitor, accomplishes similar results, but costs approximately half as much as the competitor's product). Although we express no opinion thereon, such a defendant may have a legitimate reason to use the competitor's trademark as a meta tag and, in any event, when the defendant's website is actually accessed, it will be clear to the consumer that there is no relationship between the defendant and the competitor beyond the competitive relationship. Resolution of the foregoing, as well as other factual situations not before us, appropriately await the day that such factual situations are presented concretely.

advertisement of defendant's goods; and (5) that such use caused a likelihood of confusion to consumers, we conclude that the district court did not err in concluding that plaintiffs demonstrated a likelihood of success with respect to the trademark infringement claim.

B. Likelihood of Success on the Merits of the False Advertising Claims

The district court did not clearly err in its factual findings that Axiom's representations are literally false and material to consumers' purchasing decisions, and thus NAM and Adagen demonstrated a likelihood on success on the merits of their false advertising claims. Regarding false advertising, section 43(a) of the Lanham Act provides, in relevant part, as follows:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a) (2006). To establish a likelihood of success on the merits of a false advertising claim under this section, the movant must demonstrate the

following: “(1) the ads of the opposing party were false or misleading, (2) the ads deceived, or had the capacity to deceive, consumers, (3) the deception had a material effect on purchasing decisions, (4) the misrepresented product or service affects interstate commerce, and (5) the movant has been – or is likely to be – injured as a result of the false advertising.” Johnson & Johnson, 299 F.3d at 1247. Axiom only challenges the district court’s conclusions regarding the first and third elements – that is, whether Axiom’s statements are literally false¹¹ and whether the statements have a material effect on purchasing decisions.

1. Literal Falsity

The district court did not clearly err when it concluded that Axiom made literally false statements in its advertising.¹² First, the district court did not clearly

¹¹ In the present case, we may only sustain the preliminary injunction as it pertains to literally false statements, as opposed to those that are merely misleading. As we have explained before, “once a court deems an advertisement to be literally false, the movant need not present evidence of consumer deception,” but in contrast, “[i]f the court deems an ad to be true but misleading, the movant – even at the preliminary injunction stage – must present evidence of deception.” Johnson & Johnson, 299 F.3d at 1247. Here, the district court ruled that NAM and Adagen have not offered evidence of deception at this stage of the proceedings, and therefore the district court acknowledged that it could only enjoin those advertising statements that are literally false, not those that are merely misleading. Even if the statements are misleading (but not false), which would satisfy the first element, the second element would remain unsatisfied at this stage, and a preliminary injunction would be inappropriate. Accordingly, if we rule that any of Axiom’s representations are not literally false, we would have to reverse that aspect of the preliminary injunction.

¹² Whether a statement is literally false is a finding of fact, which is reviewed only for clear error. Scotts Co. v. United Indus. Corp., 315 F.3d 264, 274 (4th Cir. 2002) (noting that literal falsity of an advertisement is a factual question subject to the clearly erroneous standard);

err when it ruled that Axiom's claims about an affiliation with NASA are literally false. Although one engineer with NASA training or experience participated in Axiom's development of the DRX 9000, this does not constitute a joint collaboration between NASA and Axiom, nor does it support the claim that NASA engineers developed the DRX 9000 or discovered part of the DRX 9000. Similarly, although the DRX 9000 used some components that NASA also uses, that does not mean the DRX 9000 contains or embodies NASA technology. Perhaps these statements could properly be characterized as misleading rather than literally false, but it is a fine line, and we will only reverse the district court if its findings are clearly erroneous. Based on the entire evidence, we are not left with the definite and firm conviction that the district court clearly erred.¹³

Second, the district court likewise did not clearly err when it ruled that Axiom's claims about the DRX 9000 being FDA "approved" are literally false. The DRX 9000 is a Class II medical device, which is only eligible for FDA

see also Time Warner Cable, Inc. v. DIRECTV, Inc., 497 F.3d 144, 158 (2d Cir. 2007); Hickson Corp. v. N. Crossarm Co., Inc., 357 F.3d 1256, 1261 (11th Cir. 2004) ("The first element of the Lanham Act test requires that the plaintiff show that the statements at issue were either '(1) commercial claims that are literally false as a factual matter'" (quoting United Indus. Corp. v. Clorox, 140 F.3d 1175, 1180 (8th Cir. 1998))).

¹³ Furthermore although Axiom objects that several of its statements regarding NASA only appeared in a video that was never released to any potential consumers, the record contains ample evidence of additional statements, beyond those in the video, that support the district court's ruling of literal falsity.

“clearance” rather than FDA “approval;” FDA approval is a separate process that applies only to Class III devices.¹⁴ See 21 U.S.C. §§ 360c, 360e (2006). Compare 21 C.F.R. § 807.81(a)(1) (2006), with 21 C.F.R. § 814.1(c) (2006). As such, Axiom’s statements that the DRX 9000 is FDA “approved” are literally false. In fact, FDA regulations state that it “is misleading and constitutes misbranding” to claim FDA approval when a device is merely FDA cleared. See 21 C.F.R. § 807.97 (2006). Although these regulations use the term “misleading,” they also describe such a misrepresentation as “misbranding,” and again, it is often a matter of degree whether a statement is literally false or merely misleading. Based on the entire evidence, we are convinced that the district court did not clearly err in judging Axiom’s statements literally false.¹⁵

2. Materiality to Consumers’ Purchasing Decisions

¹⁴ Regulation of medical devices is governed by the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, as amended by the Medical Device Amendments of 1976, 90 Stat. 539, 21 U.S.C. § 301 *et seq.* See Buckman Co. v. Plaintiffs’ Legal Comm., 531 U.S. 341, 345, 121 S. Ct. 1012, 1015 (2001). Under these regulations, medical devices are divided into three categories: “Class I devices are those that present no unreasonable risk of illness or injury and therefore require only general manufacturing controls; Class II devices are those possessing a greater potential dangerousness and thus warranting more stringent controls; Class III devices ‘presen[t] a potential unreasonable risk of illness or injury’ and therefore incur the FDA’s strictest regulation.” Id. (quoting § 360c(a)(1)(C)(ii)(II) (1994 & Supp. V)).

¹⁵ Furthermore, despite Axiom’s arguments to the contrary, the district court did not step into the FDA’s shoes when it ruled that the DRX 9000 was not approved. The district court was not making a determination whether the device should be approved, it merely noted what the FDA had already determined.

The evidence amply supports the district court's conclusion that Axiom's statements are material to consumers' purchasing decisions. Even when a court finds that a defendant's ads are literally false, the plaintiff, to succeed on a claim of false advertising, must still "establish that 'the defendant's deception is likely to influence the purchasing decision.'" Johnson & Johnson, 299 F.3d at 1250 (quoting Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Ave., 284 F.3d 302, 311 (1st Cir. 2002)). "The materiality requirement is based on the premise that not all deceptions affect consumer decisions." Id.

The types of false claims that the district court enjoined – regarding NASA affiliation and FDA approval – logically would influence a doctor's decision to purchase the DRX 9000 over a competing machine without those qualities. These statements not only represent the quality of the device, but they provide marketing opportunities to the purchasing doctor when he or she in turn is advertising to prospective patients. In fact, after the onset of litigation against Axiom, several doctors who had purchased DRX 9000s sent letters to Axiom expressing their dissatisfaction with the possibility that they might not be able to use Axiom's claims, if the claims proved untrue, to attract patients. These letters provide clear evidence that Axiom's representations would affect doctors' decisions whether to purchase a DRX 9000. Based on this and all other evidence currently in the

record, the district court did not err in its conclusion that these false statements are material to consumers' purchasing decisions.

C. Presumptions of Irreparable Harm

Even though we hold that NAM and Adagen have established a substantial likelihood of success on the merits of their trademark infringement and false advertising claims, we must still evaluate whether NAM and Adagen have demonstrated, with respect to each claim, that they will suffer irreparable harm in the absence of an injunction. In reaching its conclusion that NAM and Adagen satisfied this element of the preliminary injunction test, the district court relied on two presumptions, one regarding the infringement claims and one regarding the false advertising claims. For the reasons that follow, we vacate the preliminary injunction with respect to both the trademark claims and the false advertising claims.

1. Irreparable Harm in False Advertising Cases

The district court erred when it presumed that NAM and Adagen would suffer irreparable harm in the absence of a preliminary injunction merely because Axiom's advertisements are literally false. The district court cited a case out of the Northern District of Georgia, Energy Four, Inc. v. Dornier Medical Systems, Inc., 765 F. Supp. 724, 734 (N.D. Ga. 1991), for the following proposition: "In

false advertising cases, '[p]roof of falsity is sufficient to sustain a finding of irreparable injury for purposes of a preliminary injunction.' ” This quote, however, is an incomplete statement of the law. Proof of falsity is generally only sufficient to sustain a finding of irreparable injury when the false statement is made in the context of comparative advertising between the plaintiff's and defendant's products. See McCarthy, supra, § 27:37 (“Where the challenged advertising makes a misleading comparison to a competitor's product, irreparable harm is presumed. But if the false advertising is non-comparative and makes no direct reference to a competitor's product, irreparable harm is not presumed.” (internal footnotes omitted)). Although some cases, such as the one cited by the district court, employ language that may suggest a more expansive presumption, such quotes take the original principle out of context without explanation.

Once this presumption is properly stated, it becomes evident that NAM and Adagen are not entitled to the presumption's benefits because Axiom's statements, although false, do not mention NAM's products by name or in any way compare Axiom's products with NAM's products.¹⁶ This is not to say that NAM and Adagen could not demonstrate, absent the presumption, that they will suffer

¹⁶ In reaching this conclusion, we need not address whether this conclusion is also indicated by eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 126 S. Ct. 1837 (2006).

irreparable harm from Axiom's false advertising, but the district court abused its discretion by relying solely on the presumption to find irreparable harm.

Accordingly, we vacate the preliminary injunction to the extent it proscribes Axiom's false advertising, and we remand to the district court to determine whether NAM and Adagen will suffer irreparable harm in the absence of a preliminary injunction.

2. Irreparable Harm in Trademark Infringement Cases

Regardless of whether NAM deserves a presumption of irreparable harm on its false advertising claims, our prior cases do extend a presumption of irreparable harm once a plaintiff establishes a likelihood of success on the merits of a trademark infringement claim. Our circuit has acknowledged as much on several occasions. See, e.g., Tally-Ho, Inc. v. Coast Cmty. Coll. Dist., 889 F.2d 1018, 1029 (11th Cir. 1989) (" 'It is generally recognized in trademark infringement cases that (1) there is not [an] adequate remedy at law to redress infringement and (2) infringement by its nature causes irreparable harm.' " (quoting Processed Plastic Co. v. Warner Commc'ns, 675 F.2d 852, 858 (7th Cir. 1982))); McDonald's Corp. v. Robertson, 147 F.3d 1301, 1310 (11th Cir. 1998).

Nonetheless, although established law entitles NAM and Adagen to this presumption in the trademark infringement context, a recent U.S. Supreme Court

case calls into question whether courts may presume irreparable harm merely because a plaintiff in an intellectual property case has demonstrated a likelihood of success on the merits. See generally eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 126 S. Ct. 1837 (2006). In eBay, after a jury had found patent infringement by the defendant, the district court denied the plaintiff's motion for permanent injunctive relief. Id. at 390-91, 126 S. Ct. at 1839. In so doing, the district court "appeared to adopt certain expansive principles suggesting that injunctive relief could not issue in a broad swath of cases." Id. at 393, 126 S. Ct. at 1840. On appeal, the Federal Circuit reversed the denial of injunctive relief, articulating a categorical rule that permanent injunctions shall issue once infringement is established. Id. at 393-94, 126 S. Ct. at 1841. The Supreme Court reversed the Federal Circuit and admonished both the district and appellate courts for applying categorical rules to the grant or denial of injunctive relief. Id. at 394, 126 S. Ct. at 1841. The Court stressed that the Patent Act indicates "that injunctive relief 'may' issue only 'in accordance with the principles of equity.' " Id. at 393, 126 S. Ct. at 1839. Because the Court concluded "that neither court below correctly applied the traditional four-factor framework that governs the award of injunctive relief, [it] vacated the judgment of the Court of Appeals, so that the District Court may apply that framework in the first instance." Id. at 394, 126 S. Ct. at 1841. The Supreme

Court held that while “the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, . . . such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards.” Id.

Although eBay dealt with the Patent Act and with permanent injunctive relief, a strong case can be made that eBay’s holding necessarily extends to the grant of preliminary injunctions under the Lanham Act. Similar to the Patent Act, the Lanham Act grants federal courts the “power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable.” 15 U.S.C. § 1116(a) (2006). Furthermore, no obvious distinction exists between permanent and preliminary injunctive relief to suggest that eBay should not apply to the latter. Because the language of the Lanham Act – granting federal courts the power to grant injunctions “according to the principles of equity and upon such terms as the court may deem reasonable” – is so similar to the language of the Patent Act, we conclude that the Supreme Court’s eBay case is applicable to the instant case.

However, we decline to express any further opinion with respect to the effect of eBay on this case. For example, we decline to decide whether the district court was correct in its holding that the nature of the trademark infringement gives

rise to a presumption of irreparable injury. In other words, we decline to address whether such a presumption is the equivalent of the categorical rules rejected by the Court in eBay. We decline to address such issues for several reasons. First, the briefing on appeal has been entirely inadequate in this regard. Second, the district court has not addressed the effect of eBay. Finally, the district court may well conclude on remand that it can readily reach an appropriate decision by fully applying eBay without the benefit of a presumption of irreparable injury, or it may well decide that the particular circumstances of the instant case bear substantial parallels to previous cases such that a presumption of irreparable injury is an appropriate exercise of its discretion in light of the historical traditions. See eBay, 547 U.S. at 394-97, 126 S. Ct. at 1841-43 (concurring opinions of Chief Justice Roberts and Justice Kennedy, representing the views of seven Justices). Accordingly, we also vacate the preliminary injunction as it applies to the trademark infringement claim, and remand to the district court for further proceedings not inconsistent with this opinion, and with eBay.

IV. CONCLUSION¹⁷

¹⁷ We also reject Axiom's argument that the district court failed to exercise its discretion with respect to the bond issue. The district court did exercise its discretion not to require a bond.

In sum, we affirm the district court's findings with respect to the likelihood of success on the merits of the trademark claims and the false advertising claims. However, we vacate the preliminary injunction with respect to both, and we remand to the district court for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.



OFFICE OF THE ATTORNEY GENERAL

HARDY MYERS

FOR IMMEDIATE RELEASE

June 28, 2007

AG STOPS OUT-OF-STATE COMPANIES FROM USING 'JUNK SCIENCE' TO PROMOTE CHIROPRACTIC DEVICES

Oregon Chiropractors Disseminated Deceptive Advertisements

Attorney General Hardy Myers today filed settlement agreements with a Florida manufacturer of "spinal decompression devices" and a California chiropractor, who markets promotional services to chiropractors. The agreements resolve allegations that the companies disseminated deceptive advertisements in Oregon that were used by Oregon chiropractors.

Named in Assurances of Voluntary Compliances (AVC) filed in Marion County Circuit Court are Axiom Worldwide, Inc. of Tampa, Florida and Altadonna Communications, Inc. and its owner Benjamin A. Altadonna of Danville, California. Neither AVC admits law violation.

"Oregon chiropractors must do their own homework before purchasing and promoting medical devices," Myers said. "Medical professionals cannot simply rely on the sellers' claims without investigating for themselves."

"Consumers also must be wary of unrealistic health claims that lack adequate substantiation; even those being made by Oregon medical professionals," Myers added.

Oregon Department of Justice (DOJ) lawyers, initially using information from the Oregon Board of Chiropractors, found that Axiom manufactures a "spinal decompression device" called the DRX 9000 used by medical professionals to treat back pain. The devices, costing approximately \$100,000 each, were sold throughout the country including nine in Oregon. Along with the device, Axiom provided a marketing

package that included deceptive sample advertisements. Assisting with Axiom's promotion of the DRX 9000 was California chiropractor Benjamin Altadonna and his company Altadonna Communications.

DOJ lawyers found deceptive claims throughout the advertising package including statements that the DRX 9000 had an 86 percent success rate for the treatment of degenerative disc disease, disc herniations, sciatica and post-surgical pain; in fact, the companies did not possess competent and reliable evidence to substantiate the claim.

The companies stated that the Food and Drug Administration (FDA) approved the devices and substantiated their claims of effectiveness. DOJ found the device had merely been cleared as similar to preexisting devices. They also misrepresented the DRX 9000 by claiming it was a scientific and medical breakthrough that resulted from NASA discoveries when, in fact, NASA discoveries had no relationship with the device.

Under the agreements, both companies must change how they market their products. All promotional claims must be substantiated with "competent and reliable scientific evidence," which means tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area.

The agreement also prohibits the companies from misrepresenting scientific studies and patient testimonials.

Axiom must pay DOJ's Consumer Protection and Education Fund a total of \$100,000. If Axiom complies with the AVC, \$25,000 will be suspended.

Benjamin Altadonna and Altadonna Communications Inc. must pay the state's Consumer Protection and Education Fund a total of \$25,000.

Consumers wanting more information about consumer protection in Oregon may call the Attorney General's consumer hotline at (503) 378-4320 (Salem area only), (503) 229-5576 (Portland area only) or toll-free at 1-877-877-9392. The Department of Justice is online at www.doj.state.or.us.

###

CONTACT: Jan Margosian, (503) 947-4333 (media line only)
Email: jan.margosian@doj.state.or.us

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ENTERED

JUN 28 2007

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STATE OF OREGON
MARION COUNTY COURTS
JUN 28 2007
FILED

CIRCUIT COURT OF OREGON

MARION COUNTY

IN THE MATTER OF:

ALTADONNA COMMUNICATIONS., INC
AND BENJAMIN A. ALTADONNA.

Case No. 07C16284

ASSURANCE OF VOLUNTARY
COMPLIANCE

1.

Altadonna Communications, Inc. and Benjamin A. Altadonna have promoted spinal decompression devices to doctors in Oregon and are the Respondents herein. This agreement is between Respondents and the Oregon Department of Justice ("DOJ") acting pursuant to ORS 646.632.

PROCEDURE

2.

This Assurance of Voluntary Compliance ("AVC") is a settlement of a disputed matter. It shall not be considered an admission of a violation of any law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Respondents expressly denies. This AVC does not constitute an admission by Respondents for any purpose, of any fact or of a violation of any state law, rule, or regulation, nor does this AVC constitute evidence of any liability, fault, or wrongdoing. Respondents enters into this AVC for the purpose of resolving the concerns of DOJ. Respondents do not admit any violation of the State Consumer Protection Laws, and do not admit any wrongdoing that could have been alleged by DOJ. Respondents and DOJ agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under the

1 Constitution of the United States, under the Constitution of the State of Oregon, or under any
2 other provision of law.

3
4 3.

5 Respondents acknowledge they received a notice from the State of Oregon pursuant to
6 ORS 646.632(2) of the alleged unlawful trade practice and the relief to be sought. In that
7 regard, DOJ has investigated the advertising practices of Respondents and persons utilizing
8 products manufactured and/or sold and/or promoted by Respondents in the State of Oregon for
9 purposes of determining whether such advertising practices have violated the Oregon Unlawful
10 Trade Practices Act, ORS 646.605 through ORS 646.656 or any other legal requirements. This
11 investigation included, but was not limited to, the matters which are specified in the Notice of
12 Unlawful Trade Practices and Proposed Resolution attached hereto as Exhibit A. For purposes
13 of this AVC, the DOJ investigation of Respondents' business practices as described in this
14 paragraph shall be referred to as the "Matters Investigated."

15
16 4.

17 Respondents deny that they have engaged in unlawful Trade Practices or violated the
18 Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.656 or any other legal
19 requirements. Respondents further state that all marketing materials relating to the DRX9000 was
20 derived from information and representations received from the manufacturer, Axiom Worldwide
21 ("Axiom") and Axiom had full knowledge of the contents of Respondents marketing materials.
22 Respondents further state that they reasonably relied upon the information and claims received from
23 Axiom relating to Axiom's products

24
25 5.

26 Respondents understand and agree that this AVC applies to Respondents, Respondents'
principals, officers, directors, agents, employees, representatives, successors and assigns, jointly

1 and severally, while acting personally, or through any corporate or other business entities,
2 whose acts, practices or policies are directed, formulated or controlled by Respondents.
3 Respondents shall be responsible for making the substantive terms and conditions of this AVC
4 known to its officers, directors, managers, and employees who are responsible for implementing
5 the obligations set forth in this AVC.

6 6.

7 Respondents understand and agree that if this AVC is accepted by DOJ, it will be
8 submitted to the Circuit Court of the State of Oregon for Marion County for approval, and, if
9 approved, will be filed with the court pursuant to ORS 646.632(2).

10 7.

11 Respondents agree to accept service of a conformed or court certified copy by prepaid
12 first class mail sent to the address following Respondent's signature and to Respondent's
13 attorney.

14 8.

15 If monies which are ordered to be paid in this AVC are not paid timely, DOJ may
16 convert the AVC to a money judgment under ORS 646.632(2); provided, however, DOJ shall
17 provide Respondents and Respondents' attorney with written notice of any default in payment
18 and Respondent shall have fifteen (15) business days from the date of such notice to cure the
19 default. In the event that such default is not cured, DOJ may convert the AVC to a money
20 judgment as provided herein. Respondents agree that a copy of the money judgment may be
21 sent to Respondents, via first class mail to the address following Respondents' signatures and to
22 Respondents' attorney.

23 9.

24 Respondents understands that, in addition to any other sanctions which may be imposed
25 under this AVC or under the law, violation of any of the terms of this AVC may result in
26 contempt of court proceedings, civil penalties of up to \$25,000 for each violation, and such

1 further relief as the court may deem appropriate. ORS 646.632(4), ORS 646.642(1) and ORS
2 646.642(2). If DOJ determines that Respondents have failed to comply with any of the terms of
3 this AVC, and if in DOJ's sole discretion, failure to comply does not threaten the health or
4 safety of the citizens of the State of Oregon, DOJ shall notify Respondent in writing at the
5 following facsimile number: (925) 314-9442 and overnight mail addressed to Benjamin
6 Altadonna, 169 E. Prospect Avenue, Suite B Danville, CA 94526 with a copy to Respondents'
7 attorneys, Robert S. Thompson at 4000 SunTrust Plaza, 303 Peachtree Street NE, Atlanta, GA
8 30308-3243 and Michael Hassen at Jeffers, Mangels, Butler & Marmaro LLP, Two
9 Embarcadero Center, Fifth Floor, San Francisco, CA 94111, or any person subsequently
10 designated by Respondents to receive such notice of failure to comply. The notice shall advise
11 Respondents of the manner in which it is believed that this AVC has been violated.
12 Respondents shall then have fifteen (15) days from the receipt of such written notice to provide
13 a good faith written response to DOJ's determination (the "Cure Period"). The response shall
14 include an affidavit containing, at a minimum, either:

15 (A) a statement explaining why Respondents believe they are in compliance with the
16 AVC; or

17 (B) an explanation of how the alleged violation occurred and

18 (1) a statement that the alleged breach has been cured and how; or

19 (2) a statement that the alleged breach cannot be reasonably cured within fifteen
20 (15) days from receipt of the notice, but:

21 (a) Respondents have begun to take corrective action to cure the alleged
22 breach;

23 (b) Respondents are pursuing such corrective action with reasonableness
24 and due diligence; and

25 (c) Respondents have provided DOJ with a reasonable timetable for
26 curing the alleged breach.

10.

Nothing herein shall prevent DOJ from agreeing in writing to provide Respondents with additional time beyond the fifteen (15) day period to respond to the notice of failure to comply.

11.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this AVC after the Effective Date; to compromise the authority of DOJ to initiate a proceeding for any contempt or sanctions for failure to comply; or to compromise the authority of the court to punish as contempt any violation of this AVC. Furthermore, nothing in this subsection shall be construed to limit the authority of DOJ to protect the interest of the State of Oregon. Notwithstanding the foregoing, DOJ agrees that it will not institute an enforcement proceeding relating to the practices at issue in the notice provided under Section 8 against Respondent during the Cure Period.

12.

The parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

REMEDIES

13.

Respondents shall comply with Oregon's Unlawful Trade Practices Act, ORS 646.605 to ORS 646.656.

14.

Respondents shall not represent or imply that DOJ acquiesces or approves of Respondents' past business practices, current practices, efforts to reform its practices, or any future practices that Respondents may adopt or consider adopting. DOJ's decision to settle this

1 matter or to otherwise unilaterally limit current or future enforcement action does not constitute
2 approval or imply authorization for any past, present, or future business practice.

3 15.

4 Respondents shall pay the sum of Twenty-five Thousand Dollars (\$25,000) to DOJ for
5 deposit to the Consumer Protection and Education Revolving Account established pursuant to
6 ORS 180.095. Said sum shall be used by DOJ as provided by law. The monies due under this
7 paragraph shall be paid to DOJ within thirty (30) days following approval of this AVC by the
8 Court.

9 16.

10 Effective immediately upon execution by Respondents of this AVC, Respondents agree
11 to adhere to each of the following requirements, which Respondents contend they already
12 comply with::

13 A. When promoting products in Oregon, Respondents shall not make any express or
14 implied statements that have the capacity, tendency or effect of deceiving or misleading or that
15 fail to state any material fact, the omission of which deceives or tends to deceive.

16 B. Respondents, in connection with the labeling, advertising, promotion, offering
17 for sale, sale, or distribution of products in Oregon, shall not make any representation, expressly
18 or by implication, concerning such products' efficacy, performance, safety or benefits, unless, at
19 the time the representation is made, Respondents possess and rely upon competent and reliable
20 scientific evidence that substantiates the representation.

21 C. For purposes of this Assurance, "*competent and reliable scientific evidence*"
22 shall mean tests, analysis, research, studies, or other evidence based on the expertise of
23 professionals in the relevant area, that have been conducted and evaluated in an objective
24 manner by persons qualified to do so, using procedures generally accepted in the profession to
25 yield accurate and reliable results.

26

1 D. Respondents shall not disseminate any patient testimonial in Oregon that does
2 not clearly and conspicuously disclose what the generally expected performance would be in
3 the depicted circumstances or clearly and conspicuously disclose the limited applicability of
4 the experience described by the patient testimonial to what consumers may generally expect to
5 achieve.

6 E. When Respondents present information in detailing pieces, brochures, booklets,
7 mailing pieces, published journals, magazines, other periodicals and newspapers, and broadcast
8 through media such as radio, television, the Internet, and telephone communications systems,
9 that references a clinical study, Respondents shall (1) accurately reflect the methodology used
10 to conduct the clinical study; (2) shall not present favorable information or conclusions from a
11 study that is inadequate in design, scope, or conduct to furnish significant support for such
12 information or conclusions; (3) shall not use statistical analyses and techniques on a
13 retrospective basis to discover and cite findings not soundly supported by the study, or to
14 suggest scientific validity and rigor for data from studies the design or protocol of which are
15 not amenable to formal statistical evaluations; (4) shall not present information from a study in
16 a way that implies that the study represents larger or more general experience with the product
17 than it actually does; (5) shall not use statistics on numbers of patients, or counts of favorable
18 results or side effects, derived from pooling data from various insignificant or dissimilar
19 studies in a way that suggests either that such statistics are valid if they are not or that they are
20 derived from large or significant studies supporting favorable conclusions when such is not
21 the case.

22 F. Respondents shall not use of the term "FDA approved" in reference to the FDA
23 510 (k) clearance process.

24 G. Nothing in this AVC shall require Respondents to: (1) take an action that is
25 prohibited by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, *et seq.*, or any
26 regulation promulgated thereunder, or by the FDA; or (2) fail to take action as required by the

1 Federal Food, Drug and Cosmetic Act or any regulation promulgated thereunder, or by the
2 FDA.

3
4 **RELEASE**

5 17.

6 Based on inquiry into Respondents' promotional practices, the Attorney General has
7 concluded that this AVC is the appropriate resolution of any alleged violation of the Oregon's
8 Consumer Protection Laws. The Attorney General acknowledges by his execution hereof that
9 this AVC terminates his inquiry under the State Consumer Protection Law of Respondents.

10 18.

11 In consideration of the Remedies, payments, undertakings, and acknowledgments
12 provided for in this AVC, and conditioned on Respondents making full payment of the amount
13 specified in Paragraph 14, the State releases and forever discharges, to the fullest extent
14 permitted by law, Respondents and their past and present officers, directors, shareholders,
15 employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, attorneys,
16 assigns, and successors (collectively, the "Releasees"), of and from any and all civil causes of
17 action, claims, damages, costs, attorney's fees, or penalties that the Attorney General could have
18 asserted against the Releasees under the State Consumer Protection Law by reason of any
19 conduct that has occurred at any time up to and including the Effective Date of this Judgment
20 relating to or based upon the Matters Investigation of this AVC ("Released Claims").

21 19.

22 The Released Claims set forth in Paragraph 17 specifically do not include the following claims:

23 (a) private rights of action by consumers, provided, however, that this Judgment
24 does not create or give rise to any such private right of action of any kind;
25
26

- 1 (b) Medicaid fraud or abuse;
2 (c) claims of antitrust, environmental or tax liability;
3 (d) claims for property damage; and
4 (e) claims to enforce the terms and conditions of this AVC.
5

6 GENERAL PROVISIONS

7 20.

8 A. Nothing in this AVC shall be construed to authorize or require any action by
9 Respondent in violation of applicable federal, state or other laws.

10 B. This AVC shall be effective ("Effective Date") on the date that it is approved by
11 the Marion County Circuit Court and Respondent has been notified via facsimile and regular
12 U.S. mail that all the parties hereto have fully executed this AVC.

13 C. If Respondents believe that modification of the terms of this AVC become
14 warranted due to (1) changes in the marketplace or applicable law, including, but not limited to,
15 administrative rules or (2) an erosion in Respondents' competitive position as a result of the
16 terms of this AVC, Respondent may submit the proposed modification in writing to DOJ. DOJ
17 will respond within a reasonable period of time after the receipt of the request.

18 D. In the event any law or regulation is enacted or adopted by the federal
19 government or by the State of Oregon which creates an impossible conflict with the terms of
20 this AVC such that Respondents cannot comply with both the statute or regulation and the terms
21 of this AVC, the requirements of such law or regulation, to the extent of the impossible conflict,
22 and after written notice by Respondents, shall replace any provisions contained herein so the
23 compliance with such law or regulation shall then be in compliance with this AVC.

24 E. At any time during the term of this AVC, Respondents shall have the right to
25 request that DOJ, based on Respondents' act or performance of the terms of this AVC, modify
26 or terminate this AVC. DOJ shall make a good faith evaluation of Respondents' request and
make a prompt decision (in no event more than forty-five (45) days from Respondents' request)

{TP297807;1}Page 9 of 12 -ASSURANCE OF VOLUNTARY COMPLIANCE

1 as to whether to grant Respondents' request. The decision whether to grant Respondents'
2 request to modify or terminate this AVC shall rest solely within the discretion of DOJ.

3 F. All notices and other communications relating to this AVC between DOJ and
4 Respondents shall be in writing and shall be deemed to have been given when delivered in
5 person to the parties' designated representatives at their addresses set forth below, or when
6 received or refused, if sent to parties' designated representatives at their addresses given below
7 by registered or certified mail with return receipt requested, or to such other representatives or
8 addresses as the parties shall designate by a notice sent in like manner.

9 G. Any notices required to be sent to DOJ or Respondents by this AVC shall be sent
10 by United States mail, certified mail, return receipt requested, or other nationally recognized
11 courier service that provides for tracking services and identification of the person signing for the
12 document. Any such notice shall be sent to the following address:

13 For Respondents, see paragraph 9.

14 For the Attorney General: David A. Hart, Assistant Attorney General, Department of
15 Justice, 1162 Court Street, N.E., Salem, Oregon 97301-4096

16 H. This AVC may be executed and delivered in counterparts, each of which
17 shall be an original, but such counterparts together shall constitute but one and the same
18 AVC.

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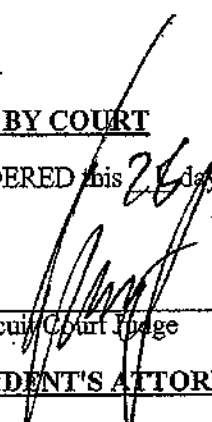
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APPROVAL BY COURT

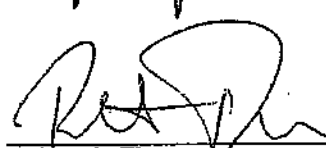
APPROVED FOR FILING and SO ORDERED this 26 day of June, 2007.



Circuit Court Judge

REVIEW BY RESPONDENT'S ATTORNEY

Approved as to form.



Robert S. Thompson
Attorney for Respondent

RESPONDENTS' SIGNATURE AND ACKNOWLEDGMENT

Respondents have read and understands this agreement and each of its terms.
Respondents agree to each and every term.

Corporate Respondent

I, Ben Altadonna, being first duly sworn on oath depose and say that I am the
President of Altadonna Communications, Inc. and am fully authorized and
empowered to sign this Assurance of Voluntary Compliance on behalf of Altadonna Communications, Inc.
and bind the same to the terms hereof.

Ben Altadonna
Print Name

President
Title

Address 169 E Prospect Ave Suite B
Danville CA 94526

SUBSCRIBED AND SWORN to before me this 25th day of June, 2007. by Benjamin Anthony -
Altadonna

Santa Bhateja
Notary Public

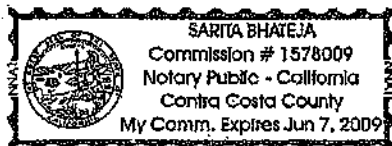
INDIVIDUAL RESPONDENT

Ben Altadonna
Benjamin S. Altadonna
A

Address 169 E Prospect Suite B
Danville CA 94526

SUBSCRIBED AND SWORN to before me this 25th day of June, 2007.

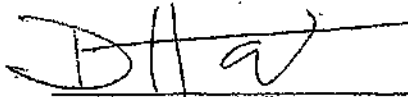
Santa Bhateja
Notary Public



ACCEPTANCE OF DOJ

Accepted this 28th day of June, 2007.

HARDY MYERS
Attorney General



David A. Hart OSB #00275
Assistant Attorney General
Department of Justice
Of Attorneys for Plaintiff
Financial Fraud/Consumer Protection Section
1162 Court Street NE
Salem, OR 97301-4096
Phone: (503) 947-4333
Fax: (503) 378-5017
Email: david.hart@doj.state.or.us

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4 DEPARTMENT OF JUSTICE

5 STATE OF OREGON

6 IN THE MATTER OF

7 ALTADONNA COMMUNICATIONS, INC.
8 AND BENJAMIN A. LTADONNA

NOTICE OF UNLAWFUL TRADE
PRACTICES AND PROPOSED
RESOLUTION

9 Respondent.

10 TO: BENJAMIN A. ALTADONNA
11 c/o Robert, S. Thompson, Esq.
12 Hawkins & Parnell LLP
4000 Suntrust Plaza
303 Peachtree Street NE
Atlanta, GA 30338-3243

13 This notice is to inform you the Oregon Attorney General is authorized to file a lawsuit
14 against you 10 days after you receive this notice. The Attorney General is required by statute to
15 give you this notice. See Oregon Revised Statute 646.632.

16 You may avoid the filing of a lawsuit by delivering an Assurance of Voluntary
17 Compliance [AVC] to the Financial Fraud Section of the Oregon Department of Justice within
18 10 days after you receive this notice.

19 An AVC must be in writing and state what actions you intend to take to resolve the
20 violations described below. The AVC is not an admission of violation of law and is submitted to
21 a Circuit Court for the State of Oregon for approval and filing.

22 Before submitting the AVC to the Circuit Court, it must be approved and accepted by the
23 Attorney General. Once filed with the court, any willful violation of the terms of an AVC is a
24 contempt of court which may result in punitive or remedial sanctions including confinement and
25 civil penalties of up to \$25,000 per violation.
26

NOTICE OF UNLAWFUL TRADE PRACTICES AND PROPOSED RESOLUTION Page 1 of 3
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DEPARTMENT OF JUSTICE
1162 Court Street NE
Salem, OR 97301-4096
PHONE: (503) 947-4333

Exhibit A
Page 1 of 3

1 This notice becomes a public record after 10 days have passed following your receipt of
2 this notice.

3 The Attorney General sent you this notice because there are concerns you violated the
4 Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.656, including but not
5 limited to the following alleged conduct.

- 6 A) Misrepresenting the efficacy of the DRX 9000 and 9000C "axial decompression"
7 devices by claiming an 86% success rate for the treatment of degenerative disc
8 disease, disc herniations, sciatica, and post surgical pain, when in fact, you do not
9 possess competent and reliable evidence to substantiate this claim.
- 10 B) Misrepresenting that the FDA approved the devices and substantiated your efficacy
11 claims when in fact, this is not the case.
- 12 C) Misrepresenting that the DRX 9000 and 9000C was a scientific and medical
13 breakthrough that resulted from NASA discoveries when in fact, this is not the case.
- 14 D) Misrepresenting that patient testimonials relating to the DRX 9000 and DRX 9000C
15 are typical treatment outcomes when in fact, you do not possess competent and
16 reliable evidence to substantiate this claim.
- 17 E) Misrepresenting the nature of DRX 9000 and DRX 9000C treatment by encouraging
18 those seeking coverage by insurance companies for DRX 9000 and DRX 9000C
19 treatments to submit treatment codes other than the one customarily used for
20 unattended mechanical traction.

21 If we file the lawsuit, we will ask the court to order you to pay:

- 22 1) Civil penalties of up to \$25,000 for each violation;
23 2) Restitution to anyone harmed by your acts; and
24 3) Our reasonable attorney's fees, costs and disbursements.

25 In addition, we may ask the court to order that you be permanently enjoined from
26 conducting any aspect of any trade or commerce in the State of Oregon.

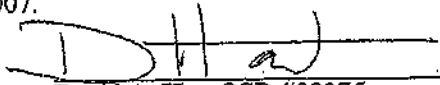
NOTICE OF UNLAWFUL TRADE PRACTICES AND PROPOSED RESOLUTION Page 2 of 3
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DEPARTMENT OF JUSTICE
1162 Court Street NE
Salem, OR 97301-4096
PHONE: (503) 947-4333

Exhibit
Page

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2 of 3

1 Dated this 15th day of June, 2007.

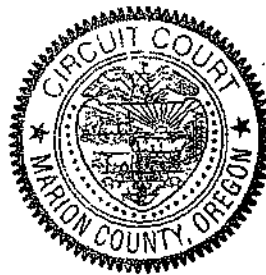
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3 David A. Hart OSB #00275
4 Assistant Attorney General
5 Department of Justice
6 Financial Fraud/Consumer Protection Section
7 1162 Court Street NE
8 Salem, OR 97301-4096
9 Phone: (503) 947-4333
10 Fax: (503) 378-5017
11 Email: david.hart@doj.state.or.us
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NOTICE OF UNLAWFUL TRADE PRACTICES AND PROPOSED RESOLUTION
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DEPARTMENT OF JUSTICE
1162 Court Street NE
Salem, OR 97301-4096
PHONE: (503) 947-4333

Exhibit A
Page 30A3

Page 3 of 3



STATE OF OREGON | ss
County of Marion

The foregoing copy has been compared
and is certified by me as a full true and
correct copy of the original on file in my
office and in my custody.

In Testimony Whereof, I have hereunto set
my hand and affixed the seal of the

Court on: 10/28/07
TRIAL COURT ADMINISTRATOR

By [Signature]

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>



NOTICE OF PUBLIC MEETING

Government Relations Committee

May 7, 2008

1:30 p.m.

**2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Public Comment

Discussion and Possible Action

- Board Member Use of State Issued E-Mail Accounts

Discussion and Possible Action

- Status of Implementing the March 25, 2008 Bureau of State Audits' Recommendations and 60 Day Status Report

Discussion and Possible Action

- Status of Implementing 2006 Sunset Review Report Recommendations

Public Comment

Future Agenda Items

ADJOURNMENT

GOVERNMENT RELATIONS COMMITTEE

Jim Conran, Chair
Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>



NOTICE OF PUBLIC MEETING

Government Relations Committee

May 7, 2008

1:30 p.m.

**2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Public Comment

Discussion and Possible Action

- Board Member Use of State Issued E-Mail Accounts

Discussion and Possible Action

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Public Comment

Future Agenda Items

ADJOURNMENT

GOVERNMENT RELATIONS COMMITTEE

Jim Conran, Chair
Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Administrative Committee****March 27, 2008****400 R Street, Room 101
Sacramento, CA 95814****Committee Members Present**

Jim Conran, Chair
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Mr. Conran called the meeting to order at 9:32 a.m.

Roll Call

Dr. Lubkin called the roll. All committee members were present.

Board Member Administrative Procedure Manual Updates

Mr. Stiger recommended minor updates to the manual to reflect new officers, committees, deletion of a cited statute, and a new revision date for the manual.

MOTION: DR. LUBKIN MOVED THAT COMMITTEE ADOPT THE RECOMMENDED CHANGES TO THE MANUAL.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Interagency Agreement with the Department of Consumer Affairs (DCA)

Mr. Stiger recommended that the Board enter into a two year contract with DCA for personnel, fiscal, legal, public affairs, and IT services. He stated that these services are important to daily operations and that DCA has provided outstanding services over the course of the current contract.

Mr. Conran provided a historical perspective of the services that DCA has provided over the years and he recommended support of a proposed contract.

Dr. Lerner voiced his support for the services of DCA and the proposed contract.

Dr. Lubkin added his full support of the proposed contract.

Public Comment:

Dr. Charles Davis, International Chiropractic Association of California (ICAC) asked if the contract would authorize DCA to override any Board policies. Mr. Conran stated the purpose of the contract is to provide consulting services and that the Board continues to maintain the authority to develop and implement policies.

MOTION: DR. LERNER MOVED THAT THE COMMITTEE AUTHORIZE THE EXECUTIVE OFFICER TO CONTINUE TO NEGOTIATE AND ENTER INTO A CONTRACT WITH DCA AND PRESENT A COPY TO THE FULL BOARD UPON COMPLETION.

MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

State Issued E-mail Addresses for Board Members

Mr. Stiger presented the Bureau of State Audits' recommendation to establish e-mail accounts for all Board members.

Dr. Lerner supports the concept and voiced concerns about members of the public sending e-mails to Board members, raises the possibility of Bagley-Keene Act violations. Dr. Lubkin agreed.

Mr. Conran recommended approval of concept and asked that staff remind Board members how to protect themselves if they receive a questionable e-mail from the public.

MOTION: DR. LUBKIN MOVED THAT THE PROPOSAL TO ISSUE BOARD MEMBERS STATE ISSUED E-MAIL ADDRESSES BE RECOMMENDED TO THE FULL BOARD FOR APPROVAL.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Investigator Contracts

Mr. Stiger announced that he terminated two private investigator contracts because the individuals were not licensed. Further, he stated that the Enforcement Committee supported a proposal for the Board to establish its own Special Investigator positions and if the Board moved in this direction the

two remaining contracts would expire on June 30, 2008.

Mr. Conran expressed his concern that previous management entered into contracts with unlicensed individuals and praised the Executive Officer for taking swift action to resolve.

Public Comment:

Dr. Davis asked Mr. Stiger what the backlog was on consumer complaints, how many complaints would be assigned to investigators and what is the timeline on hiring the investigators.

Mr. Stiger stated the complaint backlog amounts to about 600 complaints and the investigator proposal would take some time to bring the investigators on board. He said if AB 450 is passed the Board would immediately begin refilling positions to address the backlog.

Future Agenda Items:

Dr. Lerner reminded Mr. Stiger to ensure the revised manual includes the revision date to ensure the public references the most current version of the Board Member Administrative Manual.

ADJOURNMENT

Mr. Conran adjourned the meeting at 9:55 a.m.

(Agency response provided as text only.)

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931

March 10, 2008

Elaine M. Howle, State Auditor*
California Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the State Board of Chiropractic Examiners' (BCE) response to your draft audit report. The BCE thanks you for the opportunity to respond to the recommendations.

We would like you to know that the (BCE) welcomed this audit from its inception. For the past two years, board members have expressed concerns about the effectiveness and efficiency of BCE operations including personnel, enforcement procedures, financial and legal aspects. We believe the audit may have been improved if board members who were present during the audit period were interviewed. ①

Additionally, we found that many facts and findings of the audit were based on what occurred at the BCE prior to March of 2007; however, the draft audit report does not clearly articulate the significant improvements that were implemented after March of 2007. We believe the readability of the final audit report would be improved if the time periods were identified. ②

We concurred with all but two of the forty-three recommendations. Most of your recommendations, as you will read from the responses, have already been implemented, with plans to meet or exceed your recommendations pending restoration of our funding. The BCE has been, and continues to be, very committed to improving Board governance, enforcement, licensing, and continuing education functions.

Sincerely,

(Signed by: Dr. Fredrick N. Lerner)

Dr. Frederick N. Lerner, D.C., Ph.D.
Board Chair

Sincerely,

(Signed by: Brian J. Stiger)

Brian J. Stiger
Executive Officer

* California State Auditor's comments begin on page 113.

Bureau of State Audit Recommendations and Agency Responses
Chapter One

(The following responses to the BSA recommendations were prepared by the board chair and executive officer. The full audit report and agency response will be placed on the agenda for a future public board meeting for a full discussion and possible board action.)

To ensure that it complies with all Bagley-Keene requirements, the chiropractic board should:

- *Continue to involve legal counsel in providing instruction and training to board members at each meeting.*

The Board of Chiropractic Examiners (BCE) concurs with this recommendation. The BCE recognized in March 2007, that all board members did not fully understand the requirements of Bagley-Keene. With the appointment of three new board members on or about March 1, 2007, the former board chair instructed the acting executive officer to place Bagley-Keene training on the agenda of every board meeting beginning April 2007. Senior staff counsel from the Department of Consumer Affairs (DCA) provides the training and serves as the BCE in-house counsel. This interactive training has been well received by the board members and continues to be an important part of each board meeting.

- *Continue to retain documentation of the steps it takes to publicly announce its meetings.*

The BCE concurs with this recommendation. Since March 23, 2007, the BCE has publicly posted meeting agendas on its website in accordance with Bagley-Keene. In an effort to confirm the timely postings of future board meeting agendas, the BCE has instituted a check list that will be signed by the board member liaison and confirmed by the executive officer. Additionally, the board member liaison will print the agenda from the website, which includes the posting date.

To ensure that the chiropractic board complies with administrative procedure act requirements, board members should ensure they limit their communications related to board business so they do not engage in ex parte communications or compromise their ability to fulfill their responsibility in enforcement hearings.

The BCE concurs with this recommendation. Since April 2007, the board members have received extensive training on the requirements of Bagley-Keene and Administrative Procedure Act. The board members are committed to conducting themselves in accordance with these laws and seeking legal advice whenever they have a question. DCA staff counsel has noted on several occasions that the board members have been conducting themselves in an exemplary manner since receiving their initial training.

To ensure compliance with the initiative act, the chiropractic board should modify its current process so that board members make the final decision to approve or deny all licenses. Additionally, board members should ratify the previous license decisions staff made.

The BCE needs to consider options to implement this recommendation. The BCE agrees that absent a regulation delegating the decision to issue a license to BCE staff, the members must make the final decision to approve a license application.

However, the BCE respectfully disagrees that the board members must vote to deny issuance of a license. This would be a direct conflict with current BCE regulations that delegate to the executive officer the filing of all statements of issues. It would also violate the ex parte prohibitions contained in the Administrative Procedure Act and would result in any board member who voted to deny the issuance of a license having to recuse himself or herself if a proposed decision came to the board members for a vote.

③

To comply with the political reform act, the chiropractic board should do the following:

- *Ensure that its filing official is aware of the role and responsibilities and similarly, promptly inform anyone replacing the filing official.*

The BCE concurs with this recommendation. The executive officer updated the filing officer's duty statement and explained the role, duties, and responsibilities of the position to the employee. On February 27, 2008, the filing officer attended and completed training provided by the Fair Political Practices Commission on the role of a filing officer. The BCE will develop a desk manual for the filing officer by July 1, 2008.

- *Establish an effective process for tracking whether all designated employees, including board members, have completed and filed their statements of economic interests on time, to identify potential conflicts of interest.*

The BCE concurs with this recommendation. The BCE plans to address this issue in the filing officer's desk manual, which will be completed by July 1, 2008.

- *Periodically review its employees' responsibilities to ensure that all individuals who are in decision-making positions are listed as designated employees in its conflict-of-interest code.*

The BCE concurs with this recommendation. On a yearly basis the BCE will review the duties of all employees and ensure those in decision-making positions are designated employees pursuant to the conflict-of-interest code.

The chiropractic board should consider providing state e-mail accounts to its board members so they conduct their chiropractic board business in a secure and confidential environment and make their actions and correspondence accessible under public records act requests.

The BCE will place this item on the agenda for the next administrative committee meeting for discussion and possible action. If adopted by the committee it will be placed on the agenda for a future public board meeting.

To ensure that they continue to improve their knowledge and understanding of Bagley-Keene, other state laws, and board procedures, board members should continue to use their newly adopted administrative manual as guidance for conducting board business.

The BCE concurs with this recommendation. The BCE developed and adopted its first Board Member Administrative Manual on October 25, 2007, as a tool to improve board governance. The BCE will update the manual as needed to address issues as they arise.

To ensure that it complies with Bagley-Keene requirements and state laws requiring board members to attend training within specific time frames, and to ensure board members receive orientation within a reasonable amount of time of assuming office, the chiropractic board should:

- *Ensure staff retain documentation when they provide a copy of the Bagley-Keene to each board member.*

The BCE concurs with this recommendation. Beginning with the appointment of three new board members on or about March 2007, the board member liaison has maintained a file that documents when copies of Bagley-Keene are provided to board members.

- *Continue to use the member appointment checklist and establish procedures to periodically record and monitor board member training.*

The BCE concurs with this recommendation and has been utilizing the board member appointment checklist since March 2007. The BCE plans to have written procedures in place by July 1, 2008, to record and monitor board member training. Further, the Board Member Administrative Manual will be updated to include a listing of required training with specific timeframes.

- *Continue the practice of sending new board members to the orientation that Consumer Affairs provides.*

The BCE concurs with this recommendation. All current board members have completed this orientation offered by the DCA. The three newest board members completed this training within the first year of appointment. The BCE considers board member orientation as required training and will update the Board Member Administrative Manual to reflect this requirement.

Bureau of State Audit Recommendations and Agency Responses Chapter Two

To ensure that it has adequate controls over its complaint review process, the chiropractic board should do the following:

- *Develop procedures to ensure that the chiropractic board processes and resolves complaints as promptly as possible by establishing benchmarks and more structured policies and procedures specific to each step in its complaint review process.*

The BCE concurs with this recommendation. The BCE is currently collecting and analyzing data to propose performance measures to the board members at its July 2008 meeting. The BCE will complete internal policies and procedures to monitor complaint handling time and address problematic areas.

- *Establish time frames for staff to open complaint cases, complete initial review, refer cases to an investigator or expert if necessary, and close or otherwise resolve complaints through implementing informal discipline or referring for formal discipline to ensure that all complaint cases move expeditiously through each phase of the complaint review process.*

The BCE concurs with this recommendation. The BCE expects all consumer complaints to be acknowledged and opened in our database within 10 days of receipt. The BCE anticipates establishing timeframes for each phase of the enforcement process by July 2008.

Beginning with the FY 07/08, the BCE implemented steps assigned case management responsibilities to the enforcement analysts. In this role, the same enforcement analyst has responsibility to monitor the case from complaint analysis through the formal discipline phase. The BCE has established a monthly reporting requirement of pending cases generated through the enforcement database and status reports compiled by the enforcement analysts. These reports are reviewed monthly by BCE management.

- *Periodically review the status of all open complaints and investigations and identify and resolve any delays in processing.*

The BCE concurs with this recommendation. The BCE management reviews monthly workload reports, status reports, conducts staff meetings, and meets with individual staff members to resolve delays in processing.

- *Strengthen its enforcement policies and procedures to minimize the amount of time it takes staff to process consumer complaints before forwarding them to the attorney general or other law enforcement agency to ensure that it adequately assists attorneys and law enforcement agencies in enforcing the laws of chiropractic.*

The BCE agrees that improving the complaint handling and investigative process has positive effects on the ability of the attorney general and other law enforcement agencies to perform their jobs. The BCE collaborates with state and federal agencies and local law enforcement to protect the health and safety of California consumers.

To ensure that its enforcement procedures are complete and provide adequate guidance to enforcement staff, the chiropractic board should do the following:

- *Develop policies and procedures requiring that only a manager or a designated employee are allowed to make the final decisions on complaint resolution.*

The BCE concurs with this recommendation. The BCE implemented a review and approval process beginning in December 2007 in which all final decisions on complaint cases are made by the executive officer. The enforcement analysts review and analyze all of the available information and submit written recommendations along with the complaint file to the executive officer. The executive officer conducts a final review and makes the final decision. The BCE anticipates hiring an enforcement manager in the future who will assume this role.

- *Develop procedures to ensure that staff reports the issuance of citations to other states' chiropractic boards and regulatory agencies.*

The BCE reports disciplinary actions to the Federation of Chiropractic Licensing Boards which serves as a clearing house for all chiropractic licensing boards across the United States. The BCE is currently evaluating the most effective way to report the issuance of citations to other agencies keeping mind that citations are not considered discipline. The BCE expects to resolve this issue by July 1, 2008.

- *Develop procedures instructing staff when to open and how to process complaints generated internally.*

The BCE concurs with this recommendation. The BCE's updated procedures will define an internal complaint and include guidelines to assist staff determine when to generate an internal complaint. Potential internal complaints that fall outside the guidelines will require management review and approval.

To ensure that it processes and resolves consumer complaints regarding the same allegations consistently and that it consistently processes consumer complaints according to its enforcement policies and procedures, the chiropractic board should strengthen its existing procedures to provide guidance for staff on how to process and resolve all types of complaints and to ensure appropriate management oversight.

The BCE concurs with this recommendation. The BCE's updated procedures will provide instructions and guidelines to assist staff process complaints and make recommendations on disciplinary matters.

Additionally, the BCE will provide staff with formal training from the Attorney General's office, in-house staff counsel, and on the job training to ensure staff have the necessary tools to perform their duties.

To ensure that its processes for prioritizing consumer complaints are adequate and effective to ensure that staff clearly identify and process priority complaints promptly, the chiropractic board should do the following:

- *Implement tracking methods, such as flagging priority cases during complaint intake, using multiple levels of priority categories, and assigning specific time frames to process those priority categories.*

The BCE concurs with this recommendation. Effective April 1, 2008, the BCE will implement a new complaint review process that places consumer complaints into three categories: Urgent (Highest Priority), High, and Routine. Urgent complaints will receive the most focus and the shortest time frames for completion.

- *Establish procedures that direct board management to monitor the status of open complaints regularly especially those given priority status, to ensure that they do not remain unresolved longer than necessary.*

The BCE concurs with this recommendation. The BCE anticipates filling the vacant enforcement manager position in July 08 pending budget approval. The enforcement manager will be responsible and held accountable to ensuring all complaint investigations are processed timely.

To ensure that it is in compliance with all of its regulations, the chiropractic board should carefully consider the intended purpose of the quality review panels and whether implementing them is the best option to fulfill that intent. If the chiropractic board decides that another option would better accomplish the intended purpose of the quality review panels, it should implement the process for revising its regulations.

The BCE concurs with this recommendation. The Board has begun the review of both the feasibility and the intended purpose of the "quality review panels" found in Section 306 of its regulations. The Board has heard from licensees, associations, representatives from the Center for Public Interest Law, DCA staff counsel and the liaison deputy attorney general assigned to the Board regarding the options to ensuring that the Board's enforcement program is operating in the best manner possible.

To ensure that it has necessary resources to answer technical questions regarding quality of care and improper treatment that often arise, the board should fill and maintain its chiropractic consultant position. In addition, the board should ensure that its chiropractic consultant acts only in an advisory capacity and that the executive officer makes the final decision.

The BCE respectfully disagrees with the recommendation that the Board fills and maintains its chiropractic consultant position. The BCE does not want to limit its initial review of complaints to only one person because he or she would only be able to bring his or her own education, training, and experience to the position. This is too limiting and would inevitably lead to a myopic review of complaints. Additionally, no single consultant would have expertise in each practice style and school of thought plus the specialties within these various practice styles to provide competent expert advice.

④

To ensure that it adequately controls the use of experts, the chiropractic board should do the following:

- *Establish policies and procedures requiring its staff to document interviews with experts, including the content of those discussions to ensure that it refers cases to qualified experts who are free of conflicts.*

The BCE concurs with this recommendation. On March 27, 2008, BCE staff will present to the full board a proposed Expert Witness Guideline handbook, conflict of interest policy for all expert reviewers, and criteria for evaluating the qualifications of those of wish to become experts for the Board.

The BCE plans to follow up with the Attorney Generals Office providing training to those who wish to be hired as expert witnesses. The BCE is also looking into utilizing the same software program the Medical Board of California uses to document expert witness training, evaluations, areas of expertise and other pertinent information.

- *Consider entering into formal written contracts for services from experts or require them to provide written attestations that they are free of conflicts in cases assigned.*

The BCE concurs with this recommendation. The BCE has gathered examples of other licensing boards' expert witness contracts including conflict of interest and confidentiality provisions. The BCE will review these samples and create its own contract containing conflict of interest and confidentiality provisions.

- *Strengthen its policies and procedures to ensure that its staff monitor experts on their adherence to the established 30-day deadline for reviewing complaint cases and submitting a written report.*

The BCE concurs with this recommendation. The BCE has drafted procedures that enforcement analysts will use to monitor and follow up on performance expectations.

Prior to the case being sent to the expert, the analyst will contact the expert and provide a brief overview of the case and discuss any potential conflicts. Within three days of receiving the case, the expert must contact the analyst and confirm that a report will be submitted within 30 days. The analyst will follow up with the expert at approximately 15 days for a status update. Depending on the specifics of the case, an extension may be granted for good cause. The BCE will not tolerate any unacceptable delays.

- *Consistently perform an evaluation of the expert's written report and thoroughly document the results of the evaluations to ensure that it does not inappropriately refer complaint cases to experts who have not demonstrated quality work in the past.*

The BCE concurs with this recommendation. The BCE will draft evaluation reports that will be completed by BCE staff and the deputy attorney general assigned to the case. These evaluations will be kept on a file and reviewed prior to assigning cases to expert witnesses.

To ensure that the chiropractic board can demonstrate that its employees meet the minimum qualifications for their positions, it should retain personnel documentation on all employees according to record retention policy. In addition, the chiropractic board should require its personnel contractor to comply with the same requirements.

The BCE concurs with this request. On March 14, 2007, the BCE contracted with the Department of Consumer Affairs for personnel services. Subsequent to the initiation of the contract, the BCE began the process of disbanding its personnel office. The DCA personnel office reviews and approves all personnel transactions and maintains relevant documents in the headquarters office.

To ensure that future chiropractic consultants are hired with the desired qualifications, the board should consider revising the position's minimum qualifications to provide additional clarity on the term practice of chiropractic, similar to the board's current requirements for experts.

- ④ The BCE does not intend to use the chiropractic consultant at this time.

- ⑤ If the BCE decides to use this classification in the future, it will first revisit the classification concept and most certainly revise the classification specification to clarify minimum qualifications and typical duties. The BCE is currently reviewing the scope of practice as it was defined in 1922 according to the Chiropractic Act. The BCE can only define the term "practice of chiropractic" according to the Act.

Bureau of State Audit Recommendations and Agency Responses Chapter Three

To ensure that it is able to measure the overall efficiency of its licensing program in processing applications and petitions, the chiropractic board should do the following:

- *Establish time frames for all types of applications and petitions the board processes.*

The BCE concurs with this recommendation. The BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

- *Establish a tracking system for applications and petitions to analyze where delays are occurring and ensure that applications and petitions are processed promptly.*

The BCE concurs with this recommendation. As stated above, the BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

- *Establish a time frame for resolving appeals that includes milestones for each phase of the process.*

The BCE concurs with this recommendation. As stated above, the BCE will analyze current processes to identify opportunities to reduce cycle time, improve quality, and decrease costs. Once completed, the BCE will establish performance measures to monitor the processing times.

To ensure that it only licenses those who are committed to following its laws and regulations, the chiropractic board should develop specific policies and procedures for staff to follow when the board has received a complaint against an applicant seeking licensure.

The BCE concurs with this recommendation. The BCE will update its procedures to include a reference and training on Business and Professions Code section 480.

To ensure that the chiropractic board is able to defend its decisions on approved applications for satellite offices, corporations, and referral services, it should implement a standard of required documentation that includes identifying when and who conducted eligibility verifications.

The BCE concurs with this request. The BCE will include signed checklists in licensing files to document that eligibility verifications were completed.

To ensure that it is placing licenses on forfeiture status according to the initiative act, the chiropractic board should do the following:

- *Establish specific procedures for staff to follow when licensees submit invalid payment when renewing licenses.*

The BCE concurs with this recommendation. The BCE will consult with the Department of Consumer Affairs to establish procedures to address dishonored checks.

- *Establish a tracking method to ensure that requests for repayment are sent promptly.*

The BCE concurs with this recommendation. The BCE will consult with the Department of Consumer Affairs to establish procedures to address dishonored checks and track repayments.

To ensure that the chiropractic board's continuing education program complies with current regulations, it should do the following:

- *Have board members ratify staff approvals of continuing education providers.*

The BCE concurs with this request. The BCE will incorporate board member ratifications of continuing education providers as appropriate.

- *Ensure its process to approve continuing education providers conforms with its regulations.*

The BCE concurs with this request. The BCE is in the process of reviewing the current process and identifying areas for improvement. Once completed, the BCE anticipates promulgating regulations to reflect these changes.

- *Comply with requirements for notifying providers of board member approval within two weeks following a scheduled board meeting and for notifying providers of application deficiencies within three weeks of receiving the application.*

The BCE concurs with this recommendation. The BCE will work with staff to coordinate board member ratifications and provider notifications pursuant to existing regulations. BCE management will monitor to ensure timeframe are being met.

- *Establish a process to track and monitor whether continuing education providers submit attendance rosters within 60 days of course completion.*

The BCE concurs with this recommendation. The BCE will develop a tracking tool to use to ensure providers are submitting rosters with 60 days of course completion.

- *Establish a procedure for maintaining accurate documentation of continuing education audits of licensees.*

The BCE concurs with this recommendation. The BCE will draft procedures to ensure accurate record keeping.

- *Establish a mechanism to ensure that all relevant steps are taken before continuing education audits are considered complete.*

The BCE concurs with this recommendation. The BCE will include a staff checklist and management review to ensure all relevant steps completed.

- *Establish a process to track course audits conducted and a procedure for taking corrective action when the course reviewer identifies a deficiency.*

The BCE concurs with this recommendation. The BCE is revamping its course audit function to increase course audits and take appropriate action to correct deficiencies.

Joint Committee on Boards, Commissions, and Consumer
Protection

**BACKGROUND PAPER FOR
HEARING
December 6, 2005**

**BOARD OF CHIROPRACTIC
EXAMINERS**

BACKGROUND, IDENTIFIED ISSUES, AND QUESTIONS

**BRIEF OVERVIEW OF THE CHIROPRACTIC
PROFESSION AND THE BOARD OF
CHIROPRACTIC EXAMINERS**

Chiropractors provide non-drug, non-surgical health care through treatment of the musculoskeletal and nervous systems and manipulation of the spinal column and bony tissues.

The Board of Chiropractic Examiners (Board) was created on December 21, 1922, as the result of an initiative measure approved by California voters on November 7, 1922. The Board is a seven-member policy-making body. Five professional members and two public members appointed by the Governor serve four-year terms.

Member's Name	Appointed By	Type	Term Expires
Barbara Stanfield, D.C. – Chair	Governor	Professional	02/10/07
R. Michael Hamby, D.C. – Vice Chair	Governor	Professional	02/10/08
Richard H. Tyler, D.C. – Secretary	Governor	Professional	02/10/08
David F. Yoshida, D.C.	Governor	Professional	02/10/06
Ronald G. Hayes, D.C.	Governor	Professional	02/10/06
Judge James Duvara, RET	Governor	Public	11/03/08
Vacant	Governor	Public	

The Board's mission is to protect consumers from fraudulent or incompetent chiropractic practice, examine applicants for licensure in order to evaluate entry level competence, and enforce the Chiropractic Initiative Act (Act), statutes, and regulations relating to the practice of chiropractic.

The Board's regulatory program also approves chiropractic schools and colleges whose graduates may apply for licensure in California and approves continuing education.

As a quasi-law enforcement agency, the Board enforces laws and regulations pertaining to the practice of chiropractic in California.

In FY 2004/05 the Board had a license base of 15,412 -- 14,206 active and 1,206 inactive licensees.

Board committees are generally made up of two members who are appointed by the Board Chair. The current committees are the Administrative Committee, Continuing Education Committee, the Examination/Licensing Committee, Enforcement Committee, Legislative Committee, Regulation Committee and the Sunset Review Committee. The committees are scheduled to meet during open session meetings held three times a year. Additionally, the committees may meet as needed; however, they have no authority independent of the Board.

The Board maintains a single office in Sacramento, which is staffed by the Board's Executive Director, who oversees a staff of 12 permanent full-time employees and one part-time employee.

In November 2004, the Board hired a new Executive Director to continue what the Board calls an aggressive program enhancement begun by prior administrators. Additionally, the Board says the office was restructured to effectively utilize positions and to improve communication.

The Board says that its educational requirements are designed to ensure the entry level competence of a chiropractor prior to licensure, while its continuing education function ensures licensees maintain up-to-date knowledge of advances in the chiropractic profession.

The Board's enforcement program disciplines licensees who violate the laws and regulations governing the practice of chiropractic. The Board contracts out for its investigative services and the Board states that the timeframe for investigation completion has shortened considerably over the last four years.

The Board's website is continually being updated, according to the Board. The consumer can verify license status and check disciplinary actions or citations online, as well as access consumer complaint processing information. All of the Board's forms are available on the website. Through the website, licensees have

immediate access to the Act, the regulations governing the profession, and up-to-date information on Board-approved continuing education providers and courses.

The Board states that its Licensing Unit continues to revise and update its various renewal forms. In February 2004, the Board implemented the new Chiropractic Law and Professional Practices examination through computer-based testing.

Because the Board was created by an initiative that does not permit amendment by the Legislature, the Legislature is without the power to sunset the Board or repeal the state's regulation of chiropractic. The Legislature could, however, place proposed reform statutes before the electorate by a two-thirds vote and seek the electorate's approval.

PRIOR SUNSET REVIEW

The Board was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) during 2001-2002. At that time, the JLSRC, which has been renamed the Joint Committee on Boards, Commissions and Consumer Protection (JCBCCP), identified a number of problem areas concerning this Board and directed the Board to address these concerns and implement a number of recommended changes. Those recommendations included the following.

- Recommended the continued regulation of chiropractors in order to ensure public health and patient safety;
- Recommended the continuation of the Board;
- Recommended that all current and future provisions of the Business and Professions Code that apply to other health-related practitioners and licensing boards should also apply to chiropractors;
- Recommended that the Board add two new public members for a total of nine members (five professional and four public);
- Recommended that the Board continue with its plan to address an excessive fund reserve by further strengthening its enforcement program and dealing with staffing changes;
- Recommended that the Board review its current requirements for reciprocal licensure and implement more efficient and appropriate terms for establishing reciprocity; and,
- Recommended that the Board continue to study the issue of whether a Bachelor's Degree should be required for licensure as a chiropractor.

Since its last review, the Board states that it has been aggressively pursuing regulatory enhancements to broaden its enforcement, licensing, and continuing education requirements. The following is a list from the Board's Sunset Review Report of the regulation changes enacted since the 2001 review. Each of them is described in more detail in Exhibit 6 to the Report.

- Section 306.2 – Persons Hired By or Under Contract with the Board.
- Section 306.3 – Investigators; Authority to Inspect Premises.
- Section 308 – Display of License.
- Section 317(h) – Unprofessional Conduct.
- Section 325.1 – License Reapplication.
- Section 326 – Criteria for Rehabilitation.
- Section 331.12.2(e)(1) – Curriculum.
- Section 355.1 - Continued Jurisdiction of a License.
- Section 356.1 – Cardiopulmonary Resuscitation/Basic Life Support.
- Section 360 – Continuing Education Audits.
- Section 386 – Fraud.
- Section 390.2 – Violation Codes and Penalties (Citation Program).

The Board has also since the last review been included in legislation designed to bring the Board into line with other health practitioner licensing boards.

As part of the 2003-04 budget, \$4 million from the Board's reserve was involuntarily loaned to the General Fund. To date none of the loan has been repaid, but it will have accumulated interest in excess of \$180,000 by the end of the current fiscal year, based on the pooled money rate.

The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff have asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

ISSUE #1: Should the Board of Chiropractic Examiners be continued?

Issue #1 question for the Board: *Is an appointed board the most appropriate regulatory entity for the profession? Why or why not? Why is an independent board more appropriate than a bureau with more direct accountability to the Governor? Does the profession continue to necessitate regulation in the first place?*

Background: California Business and Professions Code Section 473.3 states that "Prior to the termination, continuation, or reestablishment of any board or any of the board's functions," the Joint Committee on Boards, Commissions, and Consumer Protection is required to hold public hearings, during which "each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare."

Additionally, Governor Schwarzenegger proposed in January of this year to eliminate 88 boards and commissions, including eliminating all of the boards within the Department of Consumer Affairs and converting most of them to bureaus. This Government Reorganization Proposal was based partly upon recommendations from the Governor's California Performance Review (CPR), but went further in recommending board elimination than did the CPR. The Governor withdrew this proposal in February.

Of note, this Board is not situated within the Department of Consumer Affairs. The Board's stand-alone structure places it outside of the administrative services and oversight functions provided by the Department. As a result of this unique structure, the Department does not monitor the operations of the Board and is in a limited position to offer meaningful comment on its operation. An initiative statute would be required to eliminate the Board or place it under the jurisdiction of the Department or another agency. In the past there did not appear to be any need to change the current regulatory structure for the chiropractic profession. If the Board is eliminated and a desire to regulate the profession still exists another entity would have to be given that responsibility.

Issue #2: Are statutes enacted by the Legislature since 1923 related to the regulation of chiropractic constitutional?

Issue #2 question for the Board: *Are statutes enacted by the Legislature since 1923 related to the practice of chiropractic vulnerable to a legal challenge and, if so, what steps can be taken to protect them?*

Background: Many statutes enacted by the Legislature since 1923 relating to the practice of chiropractic may be legally precarious. The uncodified Act was enacted in 1922. Eight subsequent initiatives have been enacted. Unlike many initiatives that contain provisions allowing for the Legislature to amend the initiative to further the initiative's purposes, neither the Act nor its successor initiatives contain provisions permitting any amendment by the Legislature at all.

Article II, section 10(c) of the California Constitution states that the "Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." This means that the Legislature without a vote of the electorate may not enact statutes that amend initiative statutes unless the initiative statute so provides. "When a statute enacted by the initiative process is involved, the Legislature may amend it only if the voters specifically gave the Legislature that power, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers." (*Amwest v. Wilson* (1995) 11 Cal.4th 1243, 1251)

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to "protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent." (*Huening v. Eu* (1991) 231 Cal.App.3d 766, 781." See also *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-84

The determination of what constitutes an amendment to initiated statutes is purely a question of law, invoking *de novo* judicial review. (See, e.g., *Mobilepark West Homeowners Assn. v. Escondido* (1995) 35 Cal.App.4th 32.) An amendment is a "legislative act designed to change some prior or existing law by adding or taking from it some particular provision." (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1485)

Where there is doubt as to whether or not a statute enacted by the Legislature constitutes an amendment, courts will seek first and foremost to effectuate the intent of the electorate which, where the Act is concerned, was apparently an intent to completely bar amendment by the Legislature. Article IV, section 1 of the California Constitution establishes the initiative power as a legislative power "reserved" to the "people" "themselves." Courts have long held that "the initiative power must be liberally construed to promote the democratic process" and that courts have a "solemn duty to guard the precious initiative power and to resolve any reasonable doubts in favor of its exercise." (*Gerken v. Fair Political Practices Comm'n.* (1993) 6 Cal.4th 707, 721 (Baxter, J. concurring))

Here, the questions are, "what is the intended breadth of the Act and the subsequent initiatives?" And, "how much of the Legislature's authority to regulate chiropractic was occupied by the electorate; how much – if any – remains for the Legislature?" These questions must be answered to determine

whether or not a statute enacted by the Legislature constitutes an amendment to the Act and subsequent initiatives.

In *Proposition 103 Enforcement Project v. Quackenbush*, *supra*, the Second District considered in part whether a statute that had the impact of reducing rate refunds under Proposition 103 was an amendment to that initiative.

Importantly, the Court held that the mere intrusion upon the authority and discretion of the regulator – the Commissioner, made elected by the voters in the initiative – constituted legislation that “took away” from the initiative and, hence, was an amendment.

“Applying these principles to the case here, it is apparent that section 769.2 is an attempted amendment of Proposition 103, because the section both ‘takes away’ from the provisions of the Proposition and changes its scope and effect. Proposition 103 made the position of Commissioner an elected rather than appointed position, thus making the Commissioner responsive to the voters, not the Legislature. Proposition 103 authorized the Commissioner, not the Legislature, ‘to adopt a ratemaking formula to implement the rate rollback requirement provision-specifically, to determine whether, for an individual insurer, a maximum rate for the rollback year higher than 80 percent of the 1987 rate is required to avoid confiscation and, if so, what such higher maximum rate is.’ As the Commissioner concedes, under Proposition 103, it is the Commissioner, not the Legislature, who is to determine the minimum nonconfiscatory rate. Thus, because section 769.2 removes from the Commissioner the discretion to determine whether any or all of the taxes and commissions paid by an insurer (which were paid by the insurer in connection with collecting premiums which were higher than the allowable at-least-20-percent-less-than-the-1987-premiums) were reasonable expenses and deductible from the insurer’s gross premiums (which premiums in turn form one factor in determining the insurer’s actual rate of return on its capital investments), the enactment of section 769.2 ‘takes away’ from the provisions of Proposition 103, which vest ratemaking determinations with the Commissioner.”

(*Id.* at 1488)

To the extent that the Act and subsequent initiatives were intended by the electorate to establish a system whereby the chiropractic profession was to be regulated solely or mostly by the Board, the Legislature may be powerless to enact statutes addressing those particular issues.

Observe that even an amendment that the Board agreed with could be void if enacted by the Legislature. The issue raised by *Amwest* and its progeny is not whether an amendment is good or bad. The question is one of power; of whether the Legislature has the power to tread upon amendment turf the electorate has staked out as its own.

A cursory review of some of the statutes enacted by the Legislature dealing with the chiropractic profession shows that many may be of precarious legality. Examples include:

- B&P Code section 1050, et seq., addressing chiropractic corporations;
- B&P Code section 650, banning kickbacks for referrals; and,
- Many of the forty-eight provisions of the B&P Code made applicable to the Board just this year by SB 1913, B&P Code section 1005 (cite and fine power for violating regulations; "deadbeat dads" must be refused license renewal; reinstatement of license lapsed while serving in armed forces; falsifying a license made a crime; failure to record cash transactions as ground for discipline; prohibition against Board asking in application for license for arrest records where arrest did not lead to conviction or plea; grounds for denial of a license).

These statutes are identified for illustrative purposes only. This analysis does not constitute an answer one way or the other as to whether these or other statutes are definitively invalid or definitively beyond challenge.

However, given (i) the number of chiropractic statutes enacted by initiative; (ii) the number of statutes enacted by the Legislature dealing with the chiropractic profession; and (iii) the increasing use of Article II, section 10(c) as a weapon to attack the lawfulness of statutes, it makes sense for the Board and stakeholders to (a) catalogue chiropractor-related statutes enacted by the Legislature; (b) obtain an opinion as to their likely lawfulness; and (c) take pro-active steps to protect statutes by considering such measures as placing them on the ballot.

ISSUE #3: Should the current composition and make-up of the Board, with five professional and two public members, be changed?

Issue #3 question for the Board: *Should two new public members be added to the composition of the Board, with one being appointed by the Senate Rules Committee and the other being appointed by the Assembly Speaker?*

Background: As part of the last review, the Joint Committee recommended that two additional public members be added for a total of nine members (five professional and four public). The appointing authority should be given to the Legislature with one of the new members appointed by the Senate Rules

Committee and the other by the Assembly Speaker. Currently, the Board is unique in that all seven members of the Board are appointed by the Governor with no appointments made by the Legislature.

The Joint Committee based its recommendation on the premise that this composition would provide adequate public representation while continuing to maintain the expertise needed for chiropractic issues. Requiring closer parity between public and professional members is consistent with both this Committee's and the Department of Consumer Affairs' recommendations regarding other boards that have undergone sunset review.

This recommendation was included in SB 1954 in 2002. However, due to the approximate cost of \$200,000 to the General Fund to print the amendments to the Act for the 2004 statewide election, the bill was not passed.

Comments in the Board's Sunset Review Report state that although the current composition of the Board has not been a problem in the past, and restructuring its composition would not affect its mission, the Board continues to have no objection to adding two additional public members to be appointed by the Senate and Assembly.

ISSUE #4: What is the status of the fund reserve and the General Fund loan, and what efforts, if any, should be taken to reduce the overall reserve?

Issue #4 question for the Board: *What is the status of the fund reserve including the General Fund loan, and what efforts are being made to reduce the overall reserve to a more reasonable level?*

Background: During the last two reviews the Joint Committee recommended that the Board continue with its plan to address excessive fund reserve by further strengthening its enforcement program and dealing with staffing shortages. Unfortunately, due to limits on establishing new positions that have existed for the past few years, the Board has had little success in expanding its staffing levels notwithstanding its surplus. In addition, in 2003-04, the General Fund borrowed \$4 million from the fund surplus to help offset the General Fund shortages.

If you include repayment of the General Fund loan in the overall surplus the surplus totals just under \$5 million over the past three years, and is estimated to be approximately \$4.6 million in the current year and \$4.2 million in the next budget year, which includes proposed staff increases. This translates into a reserve level of about two years, when a three- to four-month reserve is the recommended standard for most boards.

The Board's response to this issue in the Sunset Review Report states that the Board has consistently submitted budget change proposals (BCPs) for additional staff every fiscal year. Last fiscal year was the first full-time position the Board has been authorized by the Department of Finance. The Board will continue its efforts to augment staff in the budget year by requesting two support staff positions in enforcement; one support staff for licensing; and to restore the blanket funding for two retired annuitants. The Board has not proposed any other specific plan for reducing the reserve all the way to a more reasonable level.

According to the Board, the Department of Finance recently indicated that its intentions were to pay back the loan plus interest on July 1, 2006. Interest has been accumulating at 1.564 percent per year based on the pooled money rate.

ISSUE #5: Should the Board continue its efforts to improve on licensing reciprocity for applicants from other states and countries?

Issue #5 question for the Board: *What changes does the Board now recommend to improve on licensing reciprocity and how will these changes be accomplished?*

Background: As part of the last review the Joint Committee recommended that the Board review its current requirements for reciprocal licensure and implement more efficient and appropriate terms for establishing reciprocity. However, because implementation would require a change in the Act and a vote of the electorate, which involves considerable costs, an attempt to accomplish this failed. To date no further attempts have been made.

Section 5 of the Act and related regulations set forth requirements for reciprocal licensure. In order to assure that only competent practitioners are granted reciprocal licensure, applicants are required to meet the following requirements in order to reciprocate to California:

- Must be graduates from a Board-approved chiropractic college, and must have completed the minimum hours and subjects required by California law at the time their licenses were issued.
- Must have passed an equivalent examination in each of the subjects examined in California in the same year as the applicant achieved licensure; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Must have 5 years of chiropractic practice and must hold a valid license from the state from which they are reciprocating; i.e., active and no disciplinary action.

- The state from which they are reciprocating agrees to reciprocate with California.

The Board does not issue temporary licenses or permits. Thus, no reciprocity applicant may commence practice in California until all requirements for licensure are met. For a number of reasons, reciprocity licensure is very difficult to attain. Common problems reciprocity applicants encounter include the following:

- Not examined in each of the subjects required in California at the time they were issued licenses; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Did not receive scores of 75% or better in examination subject matter.
- Do not hold valid licenses (active and no disciplinary action) from states they are reciprocating from.
- Applicant's state will not reciprocate with California.

If applicants cannot meet the requirements for reciprocity licensure, then the applicants must apply for a California license as a new applicant. This often entails re-enrolling in classes and re-taking the national exams. A possible solution to exam equivalency problems that reciprocity applicants encounter would require amendment to Act. In lieu of requiring equivalent successful examination in each of the subjects examined in California in the same year as the applicant achieved licensure, instead, require passage of Parts I & II of the National Exam and passage of a 200-question, multiple choice Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The SPEC examination is designed to assess only licensed or previously licensed practitioners in areas reflecting clinical conditions and general practice. Currently, 26 states use the SPEC in one form or another for reciprocity purposes.

As indicated in its Sunset Review Report the Board members approved amending Section 9 of the Act in July 2002 at the recommendation of the Joint Committee. The language was going to be added to SB 1954, but again due to the cost to the General Fund, it was not included in the bill.

The Board will support amending Section 9 of the Act to allow licensees more flexibility to reciprocate with California.

ISSUE #6: Should the Board establish that a Bachelors Degree be a requirement for licensure?

Issue #6 question for the Board: *What is the Board's recommendation as to whether California should require a Bachelor's Degree for licensure as a chiropractor?*

Background: There is no pre-requisite that a chiropractor obtain a Bachelor's Degree in college before attending a chiropractic school. The Joint Committee recommended as part of the last review that the Board continue to study this issue and report back to the Legislature on its findings. To date, the Board is still studying this issue and as yet has not reported any findings to the Legislature.

As of the last review eight licensing jurisdictions had established bachelor's degree pre-professional training requirements – Florida, Kansas, Maryland, Montana, North Carolina, Rhode Island, Wisconsin, and the U.S. Virgin Islands. The bachelor's degree requirement issue has been a topic of debate for years by the Federation of Chiropractic Licensing Boards and the Council on Chiropractic Education. Opposition of the chiropractic colleges and others blocked proposals to make a bachelor's degree requirement at the national level and in other states.

Since California licenses constitute approximately 19 percent of the nation's active chiropractors, any change in education requirements by this Board will be broadly felt and will become the basis for a national trend.

As noted in the Board's Sunset Review Report, since the last sunset report a ninth state now requires a bachelor's degree prior to matriculation. Effective July 2005, the state of West Virginia has now made this a requirement.

A bachelor's degree requirement is currently in with four other states.

ISSUE #7: Should the Board be authorized to implement its proposed new fee structure, and if so, is a statute necessary to authorize these changes?

Issue #7 question for the Board: *What are the specific fee changes being proposed and the justifications for these changes, and are there any potential consequences that may arise due to the fact that the Board has been collecting unauthorized fees?*

Background: In its Sunset Review Report the Board indicates that it has been carefully reviewing the current fee structure, to assess the need to change existing fees and to add new fees.

The Board candidly notes that it "currently does not have the regulatory authority to collect the corporation annual report filing fee, duplicate renewal receipt fee, satellite renewal fee, and license certification fee." This apparently means that the Board – already struggling with vast surpluses – is collecting fees it is not legally allowed to collect.

As a result the Board is proposing to offset this increased fee revenue by reducing the annual renewal fee, forfeiture fee, and inactive license fee as proposed. Prior to the restructure of any new or existing fees, the Board intends to consult with the Department of General Services, which prepares the Board's fund condition to determine the impact of the proposed fee schedule on the Board's overall budget.

The following chart from the Sunset Review Report represents a summary of the Board's existing and proposed fee schedules.

Fee Schedule	Current Fee	Proposed Fee
Application Fee	\$100	*\$ 100
Initial License Fee	\$100	*\$ 100
Renewal Fee	\$150	*\$ 100
Duplicate Receipt/Renewal License***	\$ 5	\$ 25
Inactive License Renewal Fee	\$150	\$ 70
Forfeiture Fee (late renewal fee)	\$150	*\$ 100
College Approval Application Fee***	0	\$1,500
Continuing Education Course Fee	\$ 50	**\$ 30
Continuing Education Provider Fee***	0	\$ 350
Continuing Education Provider Renewal Fee***	0	\$ 200
Corporation Registration Application Fee	\$100	\$ 250
Corporation Special Report Filing Fee	\$ 5	\$ 40
Corporation Annual Renewal Fee***	\$ 10	\$ 150
License Certification/Out-of-State Verify.***	\$ 10	\$ 50
Reciprocal License Application Fee	\$ 25	\$ 125
Referral Service Application Fee	\$ 25	\$ 150
Replacement License Fee	\$ 25	\$ 40
Satellite Certificate Application Fee	\$ 5	\$ 50
Satellite Renewal Fee***	\$ 5	\$ 50

*Authority for fee amount is in the Act.

**Per each hour of course content requested.

***These fees will need to be established in the proposed fee regulation.

ISSUE #8: What is the status of the implementation of the citation and fine program?

Issue #8 question for the Board: *What were the reasons for the delay in implementation of the cite and fine program that was authorized in 2002, and what is the current status of this program?*

Background: In its Sunset Review Report the Board states that it obtained fine authority for its citation and fine program effective January 1, 2002. At that time the existing level of staffing could not absorb the additional workload associated with issuing fines. Therefore, a budget change proposal (BCP) was submitted for fiscal year 2001/02 to request a new position to handle the fine addition to the program. That year, the Department of Finance notified all state agencies that any BCP requesting additional personnel years would not be approved. As a consequence, the fine portion of the program was delayed until fiscal year

2004/05 when a BCP for the position was submitted and finally approved, effective July 1, 2005.

According to the Board, after the citation program was implemented in March 2001, the staff member handling the program went out on leave in April 2002. The program was suspended due to a lack of staff in the office to support the program. The increased number of citations issued in FY 2001/02 was a result of an accumulation of cases awaiting the Board's authority to issue citations.

The Report also indicates that in FY 2003/04 and 2004/05 only a few citations were issued because the Board did not have adequate staff to perform this function. The Board said that since it has been authorized the new position it has started the process of revising the citation regulation to include the fine provisions and is preparing to fully implement this program.

ISSUE #9: Are the number of responses and results of the Board's Consumer Satisfaction Survey similar to those of other licensed health professional boards?

Issue #9 question for the Board: *How do the number of responses and the results of the Board's Consumer Satisfaction Survey compare with those for the boards of similar licensed health professionals, and does the Board have a plan for increasing the number of responses?*

Background: As depicted in the table below, which is from the Board's Sunset Review Report, the Board has sent out 1,270 surveys since 2001 and only 115 have been returned. This response rate seems low and this raises the question as to whether the Board has made any comparisons with similar boards to determine if the survey is effective, or if there is a way to generate a better response level.

The table also indicates that the level of satisfaction with the responses of the Board to complaints appears to be low. However, there was no basis for comparison with other similar boards provided in the Report. It would be helpful for evaluation purposes if the Board could determine if comparable data can be used to enhance its ability to evaluate the survey results.

According to the Board, the table below reflects that complainants have been consistently satisfied with knowing where to file their complaints. However, as in prior years, the satisfaction consistently drops in the outcome category.

CONSUMER SATISFACTION SURVEY RESULTS					
QUESTIONS		Percent Satisfied by Calendar Year			
#	Surveys Mailed: 1,270	2001(22)	2002 (26)	2003(36)	2004(31)
# Surveys Returned: 115 (9%)		41%	35%	53%	35%
1.	Were you satisfied with knowing where to file a complaint and whom to contact?	59%	69%	81%	68%
2.	When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	55%	58%	72%	61%
3.	Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	41%	35%	47%	35%
4.	Were you satisfied with the way the Board kept you informed about the status of your complaint?	41%	23%	53%	29%
5.	Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	36%	31%	53%	32%
6.	Were you satisfied with the final outcome of your case?	18%	23%	22%	19%
7.	Were you satisfied with the overall service provided by the Board?	32%	35%	47%	26%

ISSUE #10: Is there a need to expand the Board's use of the Internet to include services such as on-line license renewal or the Consumer Satisfaction Survey?

Issue #10 question for the Board: *What has the Board done since the last review to expand the use of the Internet, and what is the status of implementing an on-line license renewal capability or filling out the Consumer Satisfaction Survey on-line?*

Background: According to the Board's Sunset Review Report the public, licensees and insurance companies regularly access the Board's website to obtain information relating to: the Board's mission, history and membership; fact sheets on consumer complaints and advertising guidelines for chiropractors; pre-paid plans and health care reimbursement payers; the chiropractic scope of practice; license status; disciplinary actions and disciplinary report sheets; regulations and public hearings; existing law; and, to ask questions and file complaints.

The Board has researched the possibility of incorporating on-line renewal as currently provided by some Department of Consumer Affairs' boards; however, the Board was informed that DCA has put a hold on providing this to other

boards at this time. The Board is also reviewing the experience of other licensing entities with regard to on-line license renewal. In the meantime the Board is pursuing this possibility through the information technology contract. Furthermore, the Board has made advancements in the process for providing disciplinary actions that can be printed from the website.

At present, the Consumer Satisfaction Survey discussed above cannot be filled out on-line. The Board may want to consider this option as a way to increase the number of responses, as well.

ISSUE #11: Should the Board be required to disclose arbitration decisions, civil judgments and/or settlements to the public?

Issue #11 question for the Board: *Why doesn't the Board currently provide information relating to arbitration decisions, malpractice judgments or settlements to the public, and does the Board believe that making this type of information available would be helpful to consumers?*

Background: As summarized in the Sunset Review Report, the Board discloses and provides information and documentation upon request and in accordance with the Public Records Act or B&P Code Section 800(c).

The table below from the Sunset Review Report delineates the type of information the Board makes available to the public. According to the Board, all of the following is available on-line except pre-accusation referrals.

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		X
Citation	X	
Fine (beginning July 2005)	X	X
Letter of Reprimand		X
Pending Investigation		X
Investigation Completed		X
Arbitration Decision	N/A	N/A
Referred to AG: Pre-Accusation	X	
Referred to AG: Post-Accusation	X	
Settlement Decision (after the effective date)	X	
Disciplinary Action Taken	X	
Civil Judgment	N/A	N/A
Malpractice Decision	N/A	N/A
Criminal Violation:		
Felony	X	
Misdemeanor	X	

As indicated above through "N/A", the Board does not make arbitration decisions, civil judgments or malpractice decisions available to the public. Nor does it make malpractice settlement information available.

In contrast, the Medical Board of California, the Osteopathic Medical Board of California and the California Board of Podiatric Medicine to disclose on their Internet websites medical malpractice judgments, settlements and arbitration awards, under certain conditions.

ISSUE # 12: Whether the Board understands and respects the electorate's role in setting policy.

Issue #12 question for the Board: *The Office of Administrative Law (OAL) recently rejected Board draft regulations. Do the Board's arguments in defense of the regulations show that the Board fails to respect the electorate's exclusive policy-making prerogatives where the regulation of chiropractic is concerned?*

Background: In October of 2005 the OAL rejected Board proposed regulations that would have permitted chiropractors in California for the first time to perform manipulation of patients while the patient was under anesthesia. The regulations would have allowed chiropractors who completed a 32-hour training course to perform manipulation while a patient was under anesthesia.

The OAL concluded that such a regulation would have created, in effect, two kinds of licenses, in violation of Section 7 of the Act that provides that a license "shall authorize the licensee to practice chiropractic in the State of California as taught in chiropractic schools or colleges."

The OAL decision did not resolve the more basic question of whether chiropractors are permitted by their voter-approved, statutory enabling authority to manipulate patients while under anesthesia. OAL elected to reject the regulations on the narrower grounds discussed above.

What most potentially reveals a fundamental misapprehension by the Board of the electorate's and its own respective legal roles is the Board's argument in defense of the rejected regulation. Essentially, the Board's argument was, if the electorate did not specifically single out manipulation under anesthesia as something chiropractors could not lawfully do, then the Board is free to allow it by regulation. Thus, the Board justified the regulation on the grounds that the Act "contains no prohibition on the use of anesthesia during ... manipulations."

Such an assertion violates the most well-known and basic principle of administrative law; namely, that a regulator may only regulate where it can point to a specific statute authorizing it to regulate. If the Board's view somehow reflected prevailing law, then the head of the Department of Corrections would be free to regulate HMOs; the head of the Office of Privacy Protection would be

permitted to regulate the Medi-Cal program; the Medical Board would be free to set education policy for high schools, only because their respective statutory schemes do not exhaustively list all of the things they cannot do.

Citing the absence of a statutory prohibition as authority to issue regulations is to arrogate to the Board the same kind of plenary lawmaking power reserved to the Legislature or, here, the electorate exercising its legislative powers. Like the Legislature, which is free to enact statutes in any area not constitutionally prohibited, the Board too under such a rationale becomes empowered to act in any arena where it is not explicitly forbidden to tread. Or, as the OAL said: "The issue which must be evaluated is not whether the Board has previously decided to prohibit the use of anesthesia by regulation. The relevant question is whether the or not the Chiropractic Act or the Medical Practices Act permit the use of anesthesia in chiropractic treatment."

ISSUE # 13: The number of days it takes to process complaints has more than doubled over the past four years, and the average number of days spent in the "pre-accusation" phase almost doubled as well in the most recent fiscal year.

Issue #13 question for the Board: *Have the reasons behind the increase in complaint processing been addressed? What is the Board's goal for average number of days to process complaints? Why did the average number of days spent in the pre-accusation phase almost double from 2003/04 to 2004/05? What is the Board doing to address this problem?*

Background: According to the Board's sunset report, the time it takes to process complaints has gone up steadily over the past four years, from 144 days in fiscal year 2001/02, to 325 days in fiscal year 2004/05. In addition, the average number of days for the "pre-accusation" phase – from the completion of the investigation to formal charges being filed – jumped from 259 in fiscal year 2003/04 to 501 days in fiscal year 2004/05. Prior to the spike in 2004/05, the average days for pre-accusation had held fairly steady.

While the average days for the other two phases of enforcement – investigations and "post-accusation" (from formal charges to conclusion of disciplinary case) – have been more consistent, and even dropping in the case of investigations, the increase in complaint processing and pre-accusation has increased the total average days for disciplinary cases from 1,056 in 2001/02 to 1,491 days in 2004/05, an unacceptably high number.

According to the Board, staff shortages and heavier workloads caused the increase in complaint processing.

FINAL RECOMMENDATIONS FOR THE BOARD OF CHIROPRACTIC EXAMINERS

FINAL RECOMMENDATIONS OF THE JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

ISSUE #1: Should the Board of Chiropractic Examiners be continued?

Recommendation #1: *The Joint Committee recommends that regulation of the chiropractic profession by the Board of Chiropractic Examiners should be continued and that another sunset review be required in five years.*

Staff Comments: Consumers should continue to be assured that chiropractors are appropriately licensed. The licensing of chiropractors ensures that they are educated and trained in the skills and abilities to provide safe and effective care. When there is misconduct by a chiropractor, regulation of the profession through the Board's enforcement structure enables for appropriate action to be taken.

ISSUE #2: Should the Chiropractic Act be amended by an initiative statute to ensure that all statutes related to the regulation of chiropractic are constitutional; and/or, should the Act be amended to allow future amendment by statute without a vote of the people under limited conditions?

Recommendation #2: *The Joint Committee recommends that the Board (1) identify those statutes that were enacted without a vote of the people that could be considered amendments to the Chiropractic Act; (2) determine if additional amendment of the Chiropractic Act is necessary to ensure that these statutes cannot be challenged; and, (3) determine in conjunction with the Joint Committee staff and stakeholders whether the Chiropractic Act should be amended to permit amendment by the Legislature without a vote of the people and, if so, on what terms.*

Staff Comments: Since the Chiropractic Act was created by initiative in 1922 it has been amended by initiative statute several times. In addition, since 1993 dozens of provisions in the Business and Professions, Civil, Corporations, Family, Health and Safety, Labor, Penal, Welfare and Institutions Codes and the Code of Civil Procedure that apply to the other healing arts boards, have been extended to the Board of Chiropractic Examiners. The statutes that made these changes were enacted by the Legislature without a vote of the people. As a consequence, the potential exists for these statutes to be vulnerable to a legal challenge. Therefore it may be necessary to protect them.

In addition, since the last review of the Board there have been a couple of attempts to amend the Chiropractic Act to implement recommendations of the Joint Committee. These were thwarted by the Department of Finance and the Legislature due to the costs of placing an initiative on the ballot. Hence it has become very difficult to modify the Act, even for minor changes to update its provisions. In modern times most initiatives contain provisions allowing the Legislature to amend them without requiring a vote of the people under specified conditions. For example an amendment could be enacted by initiative statute to allow the Legislature, by an extraordinary vote, to amend the Chiropractic Act to further its original purposes.

ISSUE #3: Should the current composition and make-up of the Board, with five professional and two public members, be changed?

Recommendation #3: *The Joint Committee recommends that the Board continue to seek amendments to the Initiative Act, in conjunction with other proposed amendments, to add two additional public members, with one each appointed by the Senate and the Assembly.*

Staff Comments: As part of the last review the Joint Committee recommended that the Board increase its membership to add two new public members, with one being appointed by the Senate Rules Committee and the other being appointed by the Speaker of the Assembly. Under existing law, this change would have to be made by initiative statute. This change would also be consistent with changes in the make-up of other healing arts boards to add public members to represent consumer interests. It is based on the premise that this composition would provide adequate public representation while continuing to maintain the expertise needed for chiropractic issues.

ISSUE #4: What is the status of the fund reserve and the General Fund loan, and what efforts, if any, should be taken to reduce the overall reserve?

Recommendation #4: *The Joint Committee recommends that the Board work with the Department of Finance to ensure that full repayment of the loan to the General Fund is reflected in the Budget Act; and, that the Board should develop a plan to reduce the level of the reserve to a more reasonable level.*

Staff Comments: At present, the Board has approximately a \$5 million reserve in its contingency fund. This includes a \$4 million loan to the General Fund from the surplus in the 2003-04 budget year. Overall this translates into a reserve level of about two years, when a three- to four-month reserve is the recommended standard for most boards. The Board is proposing to increase its staffing to address workload issues and modify its fee schedules to begin reducing the reserve.

ISSUE #5: Should the Board establish that a Bachelors Degree be a requirement for licensure?

Recommendation #5: *The Joint Committee recommends that the Board continue to study the need for a Bachelor's Degree requirement for licensure and report back to the Legislature on its findings prior to its next review.*

Staff Comments: The Board is constantly reviewing its licensing requirements, including whether or not to require a Bachelor's Degree. Since California licenses about 20 percent of the nation's chiropractors any change in education requirements by the Board will probably become the basis for a national trend. For this reason and others the Board wants to carefully assess the situation before proposing a change in education requirements.

ISSUE #6: *Should the Board implement its proposed new fee structure, and if so, is an amendment to the Initiative Act necessary to authorize these changes?*

Recommendation #6: *The Joint Committee recommends that the Board implement its proposed new fee structure through the regulatory process, or if necessary, by changing the Chiropractic Act.*

Staff Comments: In its review of the existing fee schedule the Board candidly admitted that it does not currently have the regulatory fee authority to collect several fees it has been collecting. The Board also indicated that it has assessed the need to change existing fees and to add new ones. Although the Board intends to implement the proposed fee changes by regulation, there is some doubt as to whether this can be done without a change in the law. If so, an initiative statute would probably be necessary.

The following chart from the Sunset Review Report represents a summary of the Board's existing and proposed fee schedules.

Fee Schedule	Current Fee	Proposed Fee
Application Fee	\$100	*\$ 100
Initial License Fee	\$100	*\$ 100
Renewal Fee	\$150	*\$ 100
Duplicate Receipt/Renewal License***	\$ 5	\$ 25
Inactive License Renewal Fee	\$150	\$ 70
Forfeiture Fee (late renewal fee)	\$150	*\$ 100
College Approval Application Fee***	0	\$1,500
Continuing Education Course Fee	\$ 50	**\$ 30
Continuing Education Provider Fee***	0	\$ 350
Continuing Education Provider Renewal Fee***	0	\$ 200
Corporation Registration Application Fee	\$100	\$ 250
Corporation Special Report Filing Fee	\$ 5	\$ 40
Corporation Annual Renewal Fee***	\$ 10	\$ 150
License Certification/Out-of-State Verify.***	\$ 10	\$ 50
Reciprocal License Application Fee	\$ 25	\$ 125
Referral Service Application Fee	\$ 25	\$ 150
Replacement License Fee	\$ 25	\$ 40
Satellite Certificate Application Fee	\$ 5	\$ 50
Satellite Renewal Fee***	\$ 5	\$ 50

*Authority for fee amount is in the Act.

**Per each hour of course content requested.

***These fees will need to be established in the proposed fee regulation.

ISSUE #7: What is the status of the implementation of the citation and fine program?

Recommendation #7: *The Joint Committee recommends that the Board work with the Department of Finance to ensure that it has adequate resources to fulfill its state mandate to fully implement the citation and fine program.*

Staff Comments: The Board has had numerous staffing problems in implementing the citation and fine program. To date, only the citation portion of the program has been implemented. In the near future the Board plans to evaluate all current regulations and identify those that are obsolete, out-dated, duplicative or unnecessary. During this process the fine portion of the regulations would be promulgated.

ISSUE #8: Should the Board be required to disclose arbitration decisions, civil judgments and/or settlements to the public?

Recommendation #8: *The Joint Committee recommends that the Board identify the statutory basis for its existing disclosure policy, and determine whether that basis would support additional disclosures. If so, the Board should by regulation increase the amount of information it discloses, including malpractice judgments, settlements and arbitration awards. If the Board determines it needs additional statutory authority for additional disclosure, it should seek that authority.*

Staff Comments: According to the Board it does not have the capability or the staff to provide disclosure of arbitration decisions, civil judgments and/or settlements to the

public. Legislation was enacted recently (SB 1950 of 2002 and SB 231 of 2005) to require the Medical Board of California, Osteopathic Medical Board of California and California Board of Podiatric Medicine to provide disclosure of some settlement information about physicians, osteopaths and podiatrists, and to increase the amount of information these boards receive regarding malpractice judgments.

ISSUE #9: Since the number of days it takes to process complaints has more than doubled over the past four years, and the average number of days spent in the "pre-accusation" phase almost doubled as well in the most recent fiscal year, what can be done to reduce these timeframes?

Recommendation #9: *The Joint Committee recommends that the Board work with the Department of Finance and the Attorney General to ensure that it has adequate resources to process complaints in a more timely fashion.*

Staff Comments: The Board's time it takes to process complaints has gone up steadily over the past four years and the number of days for the pre-accusation phase also jumped significantly. According to the Board, staff shortages and heavier workloads caused the increases in complaint processing times. The Board has requested an increase in staffing to address this problem.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING - CORRECTED****GOVERNMENT RELATIONS COMMITTEE**

July 17, 2008

Upon Conclusion of Public Relations Committee Meeting

State Capitol

Assembly Room 126

Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

- May 7, 2008

Public Comment**Discussion and Possible Action**

- Status of Filling Vacant Positions

Discussion and Possible Action

- Format of the Meeting Minutes for Public Meetings

Discussion and Possible Action

- Review of Chiropractic Consultant Classification

Public Comment**Future Agenda Items****ADJOURNMENT****GOVERNMENT RELATIONS COMMITTEE**

Jim Conran, Chair
Hugh Lubkin, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Government Relations Committee****May 7, 2008****2525 Natomas Park Drive, Ste. 120
Sacramento, CA 95833****Committee Members Present**

Jim Conran, Chair
Hugh Lubkin, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Mr. Conran called the meeting to order at 1:32 p.m.

Roll Call

Dr. Lubkin called the roll. All committee members were present.

Approval of Minutes

The committee accepted the minutes as complete through general consensus.

Board Member Use of State Issued E-Mail Accounts

Mr. Stiger stated that the Board Member e-mail accounts were established in the system and we are now waiting for an implementation date.

Mr. Conran asked if the Board Members would receive guidelines on the appropriate use of state issued e-mail accounts and available training. Mr. Stiger stated that the Board Members must adhere to the same guidelines and policies as state employees and that information would be forthcoming.

Dr. Charles Davis, International Chiropractic Association of California, asked if the Board Member e-mails messages are discoverable. Mr. Conran responded in the affirmative.

Dr. Davis asked if the Board Members having their own accounts would inhibit contact with the public. Mr. Conran said that was not the intent.

Status of Implementing the March 25, 2008 Bureau of State Audits' Recommendations and 60 Day Status Report

Mr. Stiger provided an update to the committee on the status of implementing the audit findings. Mr. Stiger said the implementation is on schedule and should be able to meet the due dates. Mr. Stiger stated he is working with committees to establish policies and procedures that will resolve most of the deficiencies.

Mr. Conran asked if we plan to share the status with the Legislature. Mr. Stiger stated he has not had that discussion with the Board Chair. Mr. Conran recommended that the status be shared with specific legislative committees to keep them informed.

Dr. Davis asked if the Board had sufficient staffing to respond timely to the Bureau of State Audits. Mr. Stiger said he will respond timely to the Bureau of State Audits regardless of the level of staffing.

Mr. Conran recommended that this status be placed on the website because the public has a right to know how the Board is doing.

Status of Implementing 2006 Sunset Review Report Recommendations

Mr. Conran provided an overview of the Sunset Review Process and its intent.

Mr. Stiger stated that the Board is scheduled to be heard by the committee in 2010; however, all of the recommendations from the 2006 report have not been addressed. Mr. Stiger stated that issue #4 regarding the general fund loan has been resolved and issue #7 implementation of cite and fine is in the process of being resolved.

Mr. Stiger stated he wanted to make sure the Board was aware of the status and the workload necessary to address these issues.

Mr. Conran suggested that this subject be tabled until July when we are fully staffed.

Dr. Lubkin provided his perspective on the 2006 hearing which he attended.

Kristine Schultz, California Chiropractic Association, commented that one issue was to deal with B & P codes that may or may not pertain to Doctors of Chiropractic and asked if the Board planned to address these issues through regulation.

Mr. Stiger stated that the Board has not taken a position on this issue and we have presumed that the B & P code statutes apply to our licensees.

Dr. Davis, International Chiropractic Association of California, asked when the Board would receive questions from the committee to begin working on the report.

PUBLIC COMMENT

Dr. Davis asked if the Government Relations Committee will contact legislators regarding next year's budget. Mr. Stiger stated that the Legislative Committee handles those contacts.

ADJOURNMENT

Mr. Conran adjourned the meeting at 1:52 p.m.



Recruitment and Selection of Vacant Position Update July 11, 2008

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Office Technician Cashier / Front Counter	04/11/08	Complete	Complete	Complete	05/01/08	05/05/08
Office Technician Licensing / CE	04/11/08	Complete	Complete	Complete	04/23/08	05/07/08
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete	05/29/08	06/26/08
Staff Services Analyst Compliance Unit	04/11/08	Complete	Complete	Complete	6/13/08	07/16/08
Staff Services Manager I Compliance Manager	04/11/08	Complete	Complete	Complete	05/27/08	07/07/08
Staff Services Manager I Lic/CE/Admin Manager	05/05/08	Complete	Complete	Complete	06/06/08	06/24/08
Sup. Spec. Investigator I Field Op. Manager	05/27/08	In Process	In Process			
Office Technician Policy / Admin	07/03/08	In Process	In Process			

Recruitment and Selection of Vacant Position Update
July 11, 2008
(Cont.)

Classification	Date Advertised	Application Review	Interviews Conducted	Background Checks	Formal Offer	Start Date
Spec. Investigator (3)	07/10/08					



MEDICAL BOARD OF CALIFORNIA

DIVERSION PROGRAM

1420 Howe Avenue, Suite 14
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Diversion Committee

Hilton Los Angeles Airport Hotel
Pacific B Room
5711 West Century Blvd.
Los Angeles, CA 90045

February 1, 2007

Minutes

Agenda Item 1 Call to Order

The Diversion Committee of the Medical Board of California (MBC) was called to order by Chair, Laurie Gregg, M.D., at 3:05 p.m. Notice had been sent to interested parties.

Members Present:

Laurie Gregg, M.D.
Richard Fantozzi, M.D.
Cesar Aristeiguieta, M.D.
Stephen Corday, M.D.
Shelton Duruisseau, Ph.D.

Staff and Guests Present:

Frank Valine, Program Administrator
Dave Thornton, Executive Director
Kimberly Kirchmeyer, Deputy Director
Rhonda Baldo, Staff
Terri Dukes, Staff
Julie D' Angelo Fellmeth, Center for Public Interest Law
Sandra Bressler, California Medical Association

Agenda Item 2 Approval of the November 2, 2006 Minutes

It was M/S/C (5-0) to approve the minutes of the November 2, 2006.

Agenda Item 3 Diversion Program Update

Program Status

Mr. Valine provided an update of the Diversion Program. He stated there are two Case Manager Supervisors, one located in Northern California and one in Southern California, who supervises 6 case managers. The case managers' case loads are between 32 and 38 participants. Mr. Valine stated that both Case Manager Supervisors have a case load of their own between 5 and 9 participants.

Quarterly Quality Review Report

Mr. Valine reported that 18 physicians contacted the program during the second quarter. A total of 48 physicians contacted the program in fiscal year 2006/2007. Six of the 18 physicians were not practicing medicine at the time they contacted the program. Four physicians began the evaluation process for formal participation by completing their initial interview. Three physicians were ineligible for the program and 4 physicians were not interested after they did an intake interview. Six of the physicians were board referrals, and 12 were self referrals.

Mr. Valine reported on the program's response time from the time a physician contacts the program until seen by the DEC. He reported that the times may vary because it is not unusual for a physician to enter the program immediately, however it could be a delay in scheduling them for a DEC. Upon entering the program the physician is immediately put into the random drug generator (RDG), and within days they are attending group meetings, assigned to a case manager and begin testing.

Twenty physicians were released from the program this quarter, 11 were successful and 9 unsuccessful. Eight were board referrals and 12 were self referrals. Dr. Gregg request a column be added to the report to indicate whether or not unsuccessful releases were reported to enforcement.

Mr. Valine reported 4 physicians relapsed this quarter, 3 were board referrals, and 1 was a self referral. Each relapse case had a relapse narrative which indicated what happened to the physician and the method of detection of their relapse.

Collection System Manager's Report

Approximately 2,929 urines were collected this quarter of which 106 were positive. Of the 106 positives, 101 were either approved prescriptions or determined not to be a relapse, and 5 were deemed relapses. Negative dilutes tests were retested with no positives. Mr. Valine reported that a physician stops working whether or not it is a positive from an approved prescription or a deemed relapse.

Financial Status Report per 231 (Business & Professions Code 2343 (b))

Mr. Valine discussed the program's budget and accounted for all expenses and revenue for the quarter. Dr. Aristeiguieta asked if the unspent \$41,000 in the Diversion's budget would go back into the program. Kimberly Kirchmeyer reported that the money would revert back into the Board's fund.

Diversion Program Matrix Update

There was a brief discussion on scheduling a special committee meeting or an extended meeting to discuss the diversion audit and Enforcement Monitor recommendations.

Mr. Valine reported on the 15 Enforcement Monitor's recommendations. Dr. Gregg requested that Issue 12 (develop criteria/regulations for a competency exam requirement for the Diversion Program participants) be an agenda item for the next committee meeting. Mr. Valine requested that Issue 13 (to consider a policy for mandatory "practice cessation" upon entry into the Diversion Program) also be an agenda item.

DEC Appointments/Re-Appointments

Mr. Valine asked the committee to approve two new Diversion Evaluation Committee (DEC) Members, Blaine Z. Hibbard, M.D. and Richard Prather, M.D. It was M/S/C (Gregg/Aristeiguieta) (5-0) to approve the new DEC members.

Mr. Valine asked the committee to approve four DEC members for re-appointment, Richard D. Diamond, DDS, Morris Gelbart, Ph.D., James Massman, M.D., and William Russ, DDS. It was M/S/C (Gregg/Aristeiguieta) (5-0) to approve the DEC re-appointments.

Status of Diversion Audit

Mr. Valine reported on the status of the Diversion Program audit, indicating there appear to be no major problems with the program.

Agenda Item 4 Diversion Advisory Council

Dr. Gregg discussed the proposed Diversion Advisory Council (DAC). The DAC would have seven members with representatives from the following organizations: 2 DEC members, 2 California Society of Addiction Medicine members, 1 board member and an alternate, 1 CMA member and an alternate, and 1 California Psychiatric Association member and an alternate. If approved by the board, the DAC structure will be included in legislation sponsored by the Board. The various organizations will be asked to submit nominations by April 1, 2007 and the DAC will be established at the April board meeting by the Diversion Committee. The DAC would make recommendations and provide clinical quality improvement advice on matters specified by the board or the committee's of the board. The DAC would comply with the open meetings act and

meetings would be scheduled within 30 days after a board meeting. The chair, elected by the council or his or her designee, will report back to the board, or committee of the board, at the

Diversion Committee

Meeting Minutes of February 1, 2007

Page 4

regular scheduled meetings. It M/S/C (Fantozzi/Duruisseau) (5-0) to approve the establishment of the DAC.

Agenda Item 5 Public Comment

None

Agenda Item 6 Agenda Items for the next Committee Meeting

➤ Issues 12 and 13 of the Enforcement Monitor's Matrix

Agenda Item 7 Adjournment

Dr. Gregg adjourned the meeting at 3:50 p.m.

SAMPLE



Approved March 11, 2008
ACUPUNCTURE BOARD
MEETING MINUTES

Department of Consumer Affairs
Sacramento, CA

FULL BOARD MEETING
FRIDAY, November 2, 2007

Members Present

Steven Tan, M.D., L.Ac., Chair
Kenny Cherng, L.Ac., Vice Chair
Adam Burke, L.Ac.
Cary Nosler, Public Member
Larry Yee, Public Member

Members Absent

Robert Brewer, Public Member

Staff Present

Janelle Wedge, Executive Officer
LaVonne Powell, Legal Counsel
Mary Howard, Administrative Coordinator
Cathy Hardin, Administrative Technician

Guest List on File

1. Call to Order – Dr. Steven Tan, Chair

Board Chair Steven Tan called the Acupuncture Board (board) meeting to order at approximately 8:45 a.m. Roll was taken and all members were present except Robert Brewer and Adam Burke. A quorum was not established at this time. Adam Burke arrived at approximately 9:15 a.m., at which time a quorum was established. All action items were bypassed until after Adam Burke was present.

2. Chair Report – Dr. Steven Tan

Board Chair Dr. Steven Tan had the following announcements: 1) he asked that members of the public wishing to speak do so clearly and into the microphones, and that they adhere to the two minute limit when addressing the board; 2) Peichin Cheng has resigned from the board; 3) he has resigned from the board as well, this was his last meeting. He expressed his gratitude for his fellow board members, the staff, and the public who have participated in protecting consumers.

3. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge had the following announcements: 1) she presented Steven with a plaque recognizing his leadership to the board, dedication to the consumers of California, and contributions to the field of acupuncture; 2) she introduced Cathy Hardin as the new Secretary for the board.

4. **Approval of Meeting Minutes**

a. **August 10, 2007**

The minutes of August 10, 2007 were reviewed.

CARY NOSLER MOVED AND LARRY YEE SECONDED THE MOTION TO APPROVE THE AUGUST 10, 2007 MEETING MINUTES. MOTION CARRIED UNANIMOUSLY.

b. **October 1, 2007**

The minutes of the emergency meeting on October 1, 2007, regarding the August exam results, were reviewed.

KENNY CHERNG MOVED AND ADAM BURKE SECONDED THE MOTION TO APPROVE THE OCTOBER 10, 2007 MEETING MINUTES. MOTION CARRIED UNANIMOUSLY.

c. **May 18, 2007**

The amended minutes of May 18, 2007 were reviewed.

ADAM BURKE MOVED AND CARY NOSLER SECONDED THE MOTION TO APPROVE THE MAY 18, 2007 MEETING MINUTES AS AMENDED. MOTION CARRIED UNANIMOUSLY.

5. **Petition Pursuant to B&P code Section 4967(b)**

a. **Tom Fung**

Janelle Wedge reported that he has petitioned the board to have a new license issued, without having to retake the exam, based on his past experience. His license was cancelled on May 1, 2005 for failure to renew on or before April 30, 2002. He has maintained an acupuncture practice in Canada since his California license has become inactive. He has kept his Canadian license and professional association memberships up-to-date this entire time.

Steven Tan asked if a background check had been requested from the Canadian acupuncture oversight agency on Mr. Fung. Janelle explained that, at the time of his application for licensure in California, Mr. Fung would be LiveScanned, which is checked by Department of Justice and the FBI.

Kenny Cherng expressed concern that there is no evidence of continuing education in the past few years; the only records provided are proof of updated association memberships. Janelle believes that those memberships indicate completion of continuing education hours required by the professional association. At the request of the board, Janelle will verify that continuing education is a requirement for membership in the professional associations in Canada to which Mr. Fung belongs, and bring that information back to the next board meeting.

b. **Logan Hong**

Janelle Wedge reported that he has petitioned the board to have a new license issued, without having to retake the exam, based on his past experience. His license was cancelled on September 1, 2006 for failure to renew on or before August 31, 2003. Since then, he has completed an EMT training program, and has been employed as an EMT. Based on the information provided, he has not had anything to do with acupuncture since his license expired.

There was discussion of whether Mr. Hong should be asked for further information regarding his practice since 2003. Cary suggested that it is incumbent upon the petitioner to provide complete information with the initial petition to the board. A comment by the public agreed with this position.

CARY NOSLER MOVED AND KENNY CHERNG SECONDED THE MOTION THAT LOGAN HONG BE REQUIRED TO PASS THE LICENSING EXAMINATION, AND NOT WAIVE THAT REQUIREMENT, IN ORDER TO OBTAIN A NEW LICENSE. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE - KENNY CHERNG, CARY NOSLER, STEVEN TAN, ADAM BURKE. ABSTAIN - LARRY YEE.

6. Administrative Business – (Discussion/Action)

a. Budget Report

Mary Howard provided the board with expenditure projections for FY 2007/08; the report showed that projections indicate a 22% surplus at the end of the fiscal year.

Mary also provided the fund condition, which is a projection of how the board's fund will look at the end of this fiscal year and the upcoming fiscal years. In summary, our budget is in good shape. There was discussion as to what happens to the money we don't spend and it was explained that it reverts to our fund at the end of the fiscal year and we need legislative authority to spend that money.

b. Legislative Update

Mary reported on the following bills:

AB 54 – health care coverage - No change since March 29; still in Assembly Committee on Health.

AB 636 – acupuncture - No change since April 10; still in Assembly Committee on B&P.

AB 865 – live customer service agents - No change since April 24; still in Assembly Committee on B&P.

AB 1025 – professions and vocations - Vetoed by Governor on October 13.

AB 1182 – reconstitution of BPPVE – similar to SB823; no information on DCA position on AB1182; there will probably be no further action until Legislature reconvenes in January.

AB 1525 – interim continuation of BPPVE provisions - bill was approved by the Governor and took effect July 1, 2007.

SB 136 – asian massage - No change since April 23; still in Senate Committee on B&P. Cary Nosler asked about the status of this bill, and Mary believes that the bill has died.

SB823 – reconstitution of BPPVE - amended August 20 and referred to Assembly Committee on Appropriations; DCA took an opposed position on the 7/2 and 8/20 version of the bill.

SB 840 – single payer health care coverage – Amended July 10 and referred to Assembly Committee on Appropriations; this bill was brought up at the last meeting, there was concern that acupuncturists are not considered primary care providers under this bill; there will probably not be further action on this bill until Legislature reconvenes in January. A member of the public voiced concern about acupuncturists not being included on the list of primary care providers in the bill. Legal Counsel, LaVonne Powell explained that because acupuncturists are not on that list, it may restrict acupuncturists' ability to practice as primary care providers. She recommended waiting and watching the progress of the bill, and possibly receiving some analysis from industry members.

SB 963 – regulatory boards - amended June 25 and referred to Assembly Committee on B&P. DCA has taken an opposed position on this bill and has indicated it is a two-year bill.

c. Legislative Proposals (B&P Code)

Section 4933 – change quorum from five to four – Mary Howard reported that the board initially wanted to change the board quorum from “five members” to “a majority of members”. The department responded and asked that a specific number be used, rather than “majority”. LaVonne explained that using the term “majority” can create confusion of what, exactly, constitutes a quorum.

KENNY CHERNG MOVED AND CARY NOSLER SECONDED THE MOTION TO ADOPT THE PROPOSED AMENDMENT TO SECTION 4933, STATING THAT FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM. THE MOTION CARRIED UNANIMOUSLY.

Section 4935 – make unlicensed practice of acupuncture a public offense instead of misdemeanor – Mary Howard reported that the department will not carry this amendment with its bill, so the board must decide whether to move forward with the change and finding someone else to carry the bill. LaVonne explained that the change makes it possible for the offense to be charged as either a misdemeanor or a felony, and it is easier to gain the interest of a district attorney if it is possible to charge the offense as a felony.

CARY NOSLER MOVED AND ADAM BURKE SECONDED THE MOTION TO ADOPT THE PROPOSED AMENDMENT TO SECTION 4935, MAKING UNLICENSED PRACTICE OF ACUPUNCTURE A PUBLIC OFFENSE, AND TO DIRECT THE EXECUTIVE OFFICER TO SECURE AN AUTHOR. THE MOTION CARRIED UNANIMOUSLY.

Adam Burke asked what the law is regarding illegal activity around the licensing exam. LaVonne believes that subversion of the exam is a felony, and other penal codes affect the ability to sentence for such an offense (bribery, theft, etc.). There was discussion of developing language to clarify the repercussions of subverting the exam. The board requested that staff bring language to the next meeting for further discussion.

Section 800 – add Acupuncture Board to Central Files of Licensees – Mary Howard explained that the department asked if the board wished to be included in this amendment which would add the board to B&P Code Section 800. Mary and LaVonne explained that this would be another way for the board to be notified of unprofessional conduct of acupuncturists.

ADAM BURKE MOVED AND CARY NOSLER SECONDED THE MOTION TO AMEND B&P SECTION CODE 800, AND ANY OTHER APPLICABLE SECTIONS UNDER THE 800S, AND TO DIRECT STAFF TO WORK WITH THE DEPARTMENT OF CONSUMER AFFAIRS. MOTION CARRIED UNANIMOUSLY.

7. Education Business – (Discussion/Action)

a. Proposed Elimination of Tutorial Program – Survey Results

Janelle Wedge presented a summary of responses to the Tutorial Program survey that was sent out on October 9, 2007 to former and current tutorial students. All respondents were in favor of continuing the program. Following is a summation of other written and oral testimony received regarding the possible elimination of the tutorial program, as well as a summation of board member comments. Copies of written testimony will be retained in the board's official meeting record and are available upon request.

Testimony in favor of continuing the program

- Two letters were received from legislators in support of the program.
- Several members of the California Association of Acupuncture Tutorials testified, and presented letters from acupuncturists, acupuncture instructors, current, former, and potential tutorial students, and consumers, in favor of the tutorial program.
- Tutorial students feel adequately prepared for the exam.
- The program is a less expensive, and more flexible option for those wishing to become acupuncturists.
- Tutorial program adds diversity to the field of learning.
- The program provides more clinical training and more access to patients.
- Trainees and supervisors work one on one, learning is more personalized.
- Weaknesses can be strengthened by implementing proposed changes to the program.
- Discontinuation of the program is beyond the board's scope, and would require a change in state law.
- The program presents no additional cost to the board.
- Tutorial-trained acupuncturists cause no more harm to the public than other acupuncturists.
- It is unclear who will benefit from discontinuing the tutorial program.
- Tutorial programs can be an asset to small, rural communities.

Concerns with keeping the program

- After December 31, 2008, the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) will no longer accept tutorial programs as qualification for the national exam.
- In all other states, except California, the NCCAOM exam is required for licensure; tutorial students would be restricted to practicing only in California.
- Many of the recommendations for changes to the tutorial program (e.g.: allowing tutorial students to attend classes at acupuncture schools without having met prerequisites) are in violation of school accreditation standards.
- One (or even two) supervising individuals cannot cover the depth and breadth of information that is presented to students in an academic program.

- Licensed acupuncturists are recognized as primary care providers, and one-third of the hours in an educational program are designed to prepare students for this responsibility. This preparation may be significantly less in a tutorial program.

Board member comments

- The role of the board is not to promote, but to regulate the training of acupuncturists. The first responsibility of the board is to protect consumers by regulating the education of acupuncturists.
- It sounds as if tutorial advocates (like CAAT) could work with acupuncture schools to develop apprenticeship-type programs, or alternate methods of meeting the requirements for graduation from the schools.
- A surprisingly small number of students responded to the tutorial survey.
- An academic program can provide a valuable foundation from which to begin study with a mentor.
- Standardization of education, in order to encourage constant quality, has been a continuing trend in all fields of medicine, including acupuncture.
- The burden of responsibility and oversight on the part of the board staff may be too great to justify maintaining a program that serves only about 1% of students.
- The possibility of tutorial students being unable to practice in other states is a very real concern.
- In order for acupuncture to grow in credibility in the medical field, it is essential that the health care education for acupuncturists be of the highest recognized standard.
- The tutorial program does serve some students, and should not be discontinued at this time.
- Tutorial programs cannot present the scope of knowledge and experience that educational programs can.

Lavonne Powell explained that if the board votes to eliminate the tutorial program, legislation would be drafted that would repeal current language. The legislation would then be carried through the department or by finding an author, at which point there would be committee meetings in the Legislature and opportunities for further public comment. Once legislation passed, existing regulations would be repealed through a Section 100 regulatory change request.

CARY NOSLER MOVED AND ADAM BURKE SECONDED THE MOTION TO ELIMINATE THE ACUPUNCTURE BOARD'S TUTORIAL PROGRAM, WHICH IS FOUND IN SECTIONS 4940 AND 4941 OF THE B&P CODE, AND ANY OTHER RELATED STATUTES THAT INVOLVE THE TUTORIAL PROGRAM. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE – ADAM BURKE, STEVEN TAN, CARY NOSLER. NO – LARRY YEE, KENNY CHERNG. ABSTAIN – NONE.

LaVonne suggested that a motion be passed to phase out the program, enabling current tutorial students to complete their program, as well as allowing those that have previously completed the program to compete in the examination process.

CARY NOSLER MOVED AND ADAM BURKE SECONDED THE MOTION THAT CURRENTLY APPROVED TUTORIAL STUDENTS HAVE FIVE (5) YEARS FROM THE DATE OF ELIMINATION OF THE PROGRAM, TO SUCCESSFULLY COMPLETE THE PROGRAM. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE – ADAM BURKE, STEVEN TAN, CARY NOSLER, KENNY CHERNG. NO – LARRY YEE. ABSTAIN – NONE.

ADAM BURKE MOVED AND CARY NOSLER SECONDED THE MOTION TO DIRECT THE EXECUTIVE OFFICER TO DEVELOP LEGISLATION AND SECURE AN AUTHOR TO CARRY THE PROPOSED LEGISLATION. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE – ADAM BURKE, STEVEN TAN, CARY NOSLER, KENNY CHERNG. NO – LARRY YEE. ABSTAIN – NONE.

b. School Review Report – The Atlantic Institute of Oriental Medicine

Johanna Chu Yen, the president of Atlantic Institute of Oriental Medicine (ATOM), was present at the meeting.

Janelle Wedge presented the board with the report on the facility review that was conducted by staff on October 22, 2007 of ATOM in Fort Lauderdale, Florida. The school is nationally accredited, and received its license under the laws of the State of Florida, on October 1, 1994. ATOM offers two required courses that are not within the scope of practice for California licensed acupuncturists: homeopathy and injection therapy. ATOM has removed these two courses from the requirements for California track students, and has instead added two alternative courses. The school meets all other California requirements.

CARY NOSLER MOVED AND KENNY CHERNG SECONDED A MOTION THAT THE BOARD ACCEPT STAFF'S RECOMMENDATION TO APPROVE THE ATLANTIC INSTITUTE OF ORIENTAL MEDICINE. THE MOTION CARRIED UNANIMOUSLY.

c. Status of School Site Visits

Janelle Wedge presented the board with an updated status report on pending school applications and site visits. She noted that because the Education Coordinator, Nancy Molinar, will be leaving the board within the next two weeks, Janelle will be assuming these duties for the time being.

Adam Burke asked that there be some kind of recognition presented to Nancy for her service to the board.

d. Proposed Language from Jack Miller, Pacific College of Oriental Medicine Regarding Amendments to CCR section 1399.434(h) – Clinical Training

Tom Haines presented proposed language developed by Jack Miller, revising 1399.434 to allow 100% clinical training in acupuncture programs not owned and operated by an approved school and only up to 25% under specified conditions. Steven Tan expressed his belief that Mr. Miller's language is very close that which is needed to update the regulations.

Mr. Haines also brought up a question regarding the board's description of externship and internship. LaVonne Powell believes that there is no conflict between the schools' and the board's definitions, and will bring back a clearer answer to the next board meeting.

Adam Burke requested that a minimum number of hours of supervised needling be specified in this proposed language. He also requested that the term "East Asian medicine" be used rather than "Asian medicine", which can include other Asian medicines (ayurveda, Persian, etc.). Language should also specify the qualifications of anyone acting as a "supervisor".

LARRY YEE MOVED AND CARY NOSLER SECONDED THE MOTION TO HAVE STAFF WORK WITH JACK MILLER TO REVISE THE PROPOSED LANGUAGE AS SUGGESTED AND DEVELOP REGULATORY LANGUAGE TO BRING TO THE NEXT BOARD MEETING. THE MOTION CARRIED UNANIMOUSLY.

e. Proposed Language from Elizabeth Goldblatt (ACTCM), Regarding

1. Out of state students – At the last meeting, the board agreed to this change in principal, and requested some new wording for the requirements. Elizabeth Goldblatt presented proposed language developed by ACTCM, to change the requirements for CALE applicants.

There was discussion of the appropriate wording for "acupuncture/Asian medicine", so that it is possible to accept degrees that might contain alternate wordings. LaVonne Powell recommended using the language that the U.S. Department of Education uses, which is "acupuncture and oriental medicine".

Public concern was voiced that there will not be sufficient educational oversight for out of state schools under the new wording.

CARY NOSLER MOVED AND KENNY CHERNG SECONDED THE MOTION TO SEEK LEGISLATION TO ALLOW THE BOARD TO ACCEPT FOR LICENSURE CANDIDATES WHO MEET CAB REQUIREMENTS AND WHO HAVE GRADUATED FROM AN INSTITUTION OR PROGRAM IN THE USA THAT HAS ACHIEVED ACCREDITATION OR CANDIDACY BY A SPECIALIZED ACCREDITING AGENCY RECOGNIZED BY THE U.S. DEPARTMENT OF EDUCATION AS AN AUTHORITY FOR THE QUALITY OF EDUCATION AND TRAINING IN ACUPUNCTURE AND ORIENTAL MEDICINE. THE MOTION CARRIED UNANIMOUSLY.

ADAM BURKE MOVED AND CARY NOSLER SECONDED THE MOTION TO CONFORM OTHER SECTIONS OF THE CURRENT CODE TO THE NEW REQUIREMENTS. THE MOTION CARRIED UNANIMOUSLY.

Public concern was voiced that board staff are not qualified to review medical education transcripts. LaVonne explained that there are subject matter experts to whom the board can address questions regarding applicants' transcripts.

KENNY CHERNG MOVED AND ADAM BURKE SECONDED TO CONTINUE TO HONOR APPROVAL OF OUT OF STATE SCHOOLS THAT ARE CURRENTLY APPROVED BY CAB, AND TO ELIMINATE CAB APPROVAL OF ANY FURTHER OUT OF STATE SCHOOLS. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE - STEVEN TAN, KENNY CHERNG, ADAM BURKE, CARY NOSLER. NO - NONE. ABSTAIN - LARRY YEE.

2. Foreign trained applicants - Elizabeth Goldblatt presented proposed language submitted by ACTCM, which creates equivalent language for out of state and foreign trained applicants' education requirements.

The board agreed with the concept of the language, but felt that the wording is not quite right.

LaVonne suggested that foreign trained requirements be separated from out of state requirements in the code, and that further research be done regarding the education program approval requirements of other countries.

ADAM BURKE MOVED AND CARY NOSLER SECONDED THE MOTION TO SEPARATE REGULATIONS REGARDING FOREIGN TRAINED APPLICANTS FROM THOSE REGARDING OUT OF STATE APPLICANTS, AND TO KEEP THE CURRENT FOREIGN TRAINED APPLICANT REGULATIONS THE SAME AT THIS TIME. THE MOTION CARRIED BY THE FOLLOWING ROLL CALL: AYE - STEVEN TAN, KENNY CHERNG, ADAM BURKE, CARY NOSLER. NO - NONE. ABSTAIN - LARRY YEE.

f. Limitation of Transfer Credit or Challenge Exam for Tai Qi/Qi Gong Courses

Tom Haines explained that only 50% of Tai Qi/Qi Gong transfer credits can be accepted at acupuncture schools, and since those two areas fall into the same subcategory of requirements, transfer students frequently have to repeat training. Because many transfer students have extensive experience in these subjects, it was requested that an exception be made to allow 100% of transfer credit or challenge exam credit for these courses.

The board was concerned that such an exception would set a precedent to request further exceptions for courses in other subcategories. The board suggested placing Tai Qi/Qi Gong in a broader category where 100% of transfer credit could be accepted.

ADAM BURKE MOVED AND LARRY YEE SECONDED THE MOTION TO MOVE SECTION 1399.434(b)(2)(D), EXERCISE THERAPY, INTO SECTION 1399.434(b)(1)(A), ORIENTAL MEDICINE PRINCIPLES AND THEORY. THE MOTION CARRIED UNANIMOUSLY.

g. Review of Five Year License Requirement for Clinical Directors and Supervisors

There was a request from the public to create a process that would allow persons with a specified number of years' experience outside of acupuncture (e.g., registered nurses) to serve as clinic supervisors for training programs.

Public comment expressed support for the current five year requirement, as it promotes stronger acupuncture teaching ability on the part of the supervisor.

The board agreed that the five year requirement is not excessive or limiting, and creating exceptions only causes potential for more problems in regulation.

h. Continuing Education Credit for CME Courses

Janelle Wedge presented a letter from a member of the public, requesting that the board allow CME courses to be applied toward continuing education credits.

Public comment expressed concern that CE courses do not have the same level of content and educational value as CME courses.

LaVonne Powell explained that the current regulations only allow board approved providers to offer continuing education courses, and that the trend among healing arts boards is to change that requirement so that non-approved providers would have the potential to offer courses that would apply to acupuncture continuing education.

The board agreed with the spirit of such change and the need for improvement in the acupuncture CE courses, but believes that this issue requires more discussion and research before any legislative change is proposed.

8. Examination Business

a. August 7, 2007 Licensing Examination

Janelle Wedge provided the results statistics from the examination. The public requested that statistics for first-time takers be broken out, and Janelle explained that the database cannot provide those statistics, but she has done them by hand for some schools.

LaVonne Powell reported that the investigation of the August 2007 examination found some anomalies relating to the pass rate, but no evidence was found that there was subversion of the examination.

The public expressed concern over examination security, and the board reminded the public that it is their responsibility to report to the staff or board members any information they might have regarding possible subversion of the exam.

There was a discussion regarding the relative merits of ways to improve the security of the exam, including increasing the size of the question bank, computerizing the exam, retiring old questions, working with the national exam to share questions, etc.

The board requested that an educational committee meeting be scheduled to continue discussing this issue.

9. Enforcement Business

a. Use of the Title Doctor

Based on the discussion at the last meeting, the board had decided that the most practical solution to this problem was to educate the public about what the various designations mean.

Steven Tan expressed concern that the wording regarding OMDs in the webpage material is inaccurate and misleading. The board requested that staff change the paragraph regarding OMDs to reflect the historical context of the degree, and the fact that it was solely a "California authorized" degree.

Elizabeth Goldblatt provided copies of the Oregon laws regarding the use of the title "Doctor", for the board's information.

LaVonne Powell recommended that the board develop language to change the acupuncture board law to reflect the requirements they deem necessary for use of this title, so that BPPVE will have a reference to use when developing their own regulations.

b. Enforcement Case Report

Janelle Wedge presented the board with an enforcement update and breakdown of complaints by category, indicating that between July 1, 2007 and October 24, 2007, there were 42 complaints received.

10. Set 2008 Acupuncture Board Meeting Dates and Locations

The board selected the following dates for 2008:

January 31, 2008 – Examination and Education Meeting, San Francisco

March 11, 2008

May 29, 2008

September 9, 2008

December 9, 2008

11. Election of Officers for 2008

Larry Yee nominated and Cary Nosler seconded the nomination of Adam Burke as Chairperson for 2008. The nomination carried unanimously.

Larry Yee nominated and Adam Burke seconded the nomination of Kenny Cherng as Vice Chairperson for 2008. The nomination carried unanimously.

12. Public Comment Period

Public Comments were received from the following individuals as items for the board to consider at a future meeting.

Ron Zaidman requested that the board not move Tai Qi/Qi Gong into the Oriental Medicine Principles and Theory category, because it disrupts the logic of the categories set forth in the regulations.

Hugh Morison requested that two board meetings be held in Southern California in 2008.

Benjamin Dierauf requested the statistics regarding first-time exam takers be made available to help applicants prepare. Janelle Wedge explained that the database is unable to generate that information, and the only current information has been calculated by hand. Benjamin also directed the board's attention to ACAOM's first draft of standards for the first professional doctoral program in Acupuncture and Oriental Medicine. He recommended that the board review the standards and address weaknesses in the requirements.

13. Adjournment

The meeting adjourned at approximately 1:15 p.m.



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Sciences

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BOARD MEETING MINUTES

February 15-16, 2007

Mission Inn Hotel
3649 Mission Inn Avenue
Riverside, CA 92501

Thursday, February 15

MEMBERS PRESENT

Victor Law, Chair, Public Member
Gordonna DiGiorgio, Public Member
Judy Johnson, LEP Member
Renee Lonner, LCSW Member
Victor Perez, Public Member
Karen Roye, Public Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

D'Karla Leach, Public Member

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Steve Sodergren, Program Manager
George Ritter, Legal Counsel
Christy Berger, Legislation Analyst
Justin Sotelo, Regulatory Analyst
Christina Kitamura, Administrative Assistant

GUEST LIST

On File

FULL BOARD OPEN SESSION

Victor Law, Board Chair, called the meeting to order at 9:05 a.m. Christina Kitamura called roll and a quorum was established.

I. Chairperson's Report

Mr. Law made a change to the agenda. Since Judy Johnson, Consumer Protection Committee Chair, would be arriving late, agenda item V on the report of the Consumer Protection Committee was switched with agenda item VIII.



State of California
State and Consumer
Services Agency
Arnold Schwarzenegger
Governor

Mr. Law introduced a newly appointed Board member, Renee Lonner, LCSW member. Ms. Lonner introduced herself and gave a brief background. Ms. Lonner provides management consultation for Robert T. Dorris & Associates. She also owns a small private practice. Ms. Lonner served as past-president of the California Society for Clinical Social Work and also served on the American Board of Examiners in Clinical Social Work.

Board members, staff and legal counsel introduced themselves.

II. Executive Officer's Report

A. Personnel Update

Paul Riches reported on the new hires that took place since the last Board meeting. Michelle Eernisse joined the BBS in December filling the vacant MFT evaluator position. Karmynne Williams joined the BBS in December filling the vacant Cashier position. Cynthia Finn joined the BBS in January filling the vacant Office Assistant position in the Administration Unit. There is one remaining vacant position that is under recruitment, which should be filled within the next 30-45 days.

B. Examination Update

Mr. Riches announced that the Department of Consumer Affairs (department) unsealed the bids and issued an intent to award the testing contract for the entire department to Psychological Services Inc. (PSI). PSI is a mid-sized examination firm in Southern California. The contract award has been subject to a protest and that protest process is under way at this time. The department is under strict timelines, and their intent is to have a new vendor in place by June 1, 2007.

C. Miscellaneous Matters

Mr. Riches reported that the Director of the Department of Consumer Affairs (DCA) has resigned and has been appointed to the San Diego Regional Airport Authority. Mr. Scott Reid began his first day this week as Chief Deputy Director for DCA. This position had been vacant since last summer. Mr. Reid is a former Deputy Cabinet Secretary for Fred Aguiar, the Schwarzenegger Administration, and he was also the Undersecretary for the State Consumer Services Agency when Fred Aguiar was the Secretary for the State Consumer Services Agency.

III. Approval of November 16-17, 2006 Board Meeting Minutes

Correction on page 17, item XVII, second paragraph, first sentence: change *Joan* to *Ms. Walmsley*.

Correction on page 17, item XVII, fourth paragraph, third sentence: change *Paul* to *Mr. Riches*.

GORDONNA DIGIORGIO MOVED, HOWARD STEIN SECONDED, AND ALL CONCURRED TO APPROVE THE NOVEMBER 16-17, 2006 BOARD-MEETING MINUTES AS AMENDED.

IV. Report of the Communications Committee

A. Review and Possible Adoption of Board Logo

Joan Walmsley reported on the Communications Committee. The Committee met on January 10, 2007. The Committee recommended that the Board review and select a Board logo from the designs provided by BP Cubed.

After a brief discussion, the Board was asked to adopt a Board logo.

DR. IAN RUSS MOVED, VICTOR PEREZ SECONDED, ALL CONCURRED ON ADOPTING THE BOARD LOGO EUREKA PMS 295 & 1245.

Ms. Walmsley reported on the following items discussed at the Communications Committee meeting:

- The committee conducted a review of progress on achieving the strategic objectives under Goal 1.
- Lindle Hatton of Hatton Management Consultants provided a presentation on the Board's Strategic Planning Process.
- The Committee reviewed the first drafts of the Marriage and Family Therapist and Licensed Clinical Social Worker Student Handbooks. Some minor changes were made, and it was adopted.
- The Committee reviewed the results of the Customer Satisfaction Survey. Overall satisfaction has increasingly improved.

Ms. Walmsley commended Sean O'Connor, Outreach Coordinator, and his effectiveness in the outreach program.

Mr. Riches added the outreach program is overbooked. The requests are exceeding the capacity to address them. The goal is to spread the Board's presence out to as many schools as possible, as well as leaving time in the remainder of Mr. O'Connor's schedule to perform other duties. Mr. Riches encouraged Board members to attend any of the outreach presentations.

B. Strategic Plan Update

Ms. Walmsley reported on the Customer Service Satisfaction Survey, stating that overall satisfaction is improving.

Ms. Walmsley reported on Student Outreach Coordinator and commended Sean O'Connor and his outreach efforts.

Mr. Law reported on an outreach event he attended with Mr. O'Connor. He suggested that each Board member attend an outreach event and meet the people who are attending these events.

Mr. Law moved agenda item VIII in place of agenda item V. Agenda item V was moved to proceed agenda item VII.

VIII. Report of the Marriage and Family Therapist Education Committee

Dr. Ian Russ, Committee Chair, reported on the status of the Committee, explaining that the Committee is holding meetings throughout the state to explore the rewriting and the reorganization of the curriculum for marriage and family therapist (MFT) licensure. The MFT curriculum, among the three licenses that the Board regulates, is the only one with specific content requirements mandated by law. The other curricula have other sources, so the Committee is looking at it in the context of the MHSA, the wishes of Department of Mental Health (DMH) and the changing demographics of the state of California. All of these meetings involve vigorous discussions with stakeholders.

The last meeting of the Committee was held in conjunction with the Southern California Consortium. Many programs in Los Angeles County, including colleges and institutions, met together and had an open debate regarding the curriculum. At the top of the debate were the following questions:

- What role the "recovery model" plays in delivering services in community mental health centers?
- Is it really just a rewrite of old models or is it something unique?

The DMH and the MHSA have made it very clear that those who work in the mental health departments need to know and understand that model.

Mr. Riches and Dr. Russ have collected articles and studies regarding the recovery model, and there is a lot of reading about it as cohesive model. The next part of the debate is how much is a process issue and how much is a content issue; and how much should be taught in people's placements, versus in the classroom, and the role it will have within the curriculum.

The overall issue is that students need to be prepared to go into go into community mental health agencies as well as into private practice. In all of the discussions so far, everyone is in agreement that there needs to be an increase in cultural competency. Some concerns have been raised such as: 1) there is not enough emphasis on the culture and demographics in California, and 2) there is not enough emphasis on non-traditional methods of treatment that might be culturally specific and incorporating that into the program.

There is a need to include consumers of mental health in the decision-making. Dr. Russ stated that he is in the process of setting up a meeting with consumers of mental health in March at Pepperdine University.

Dr. Russ also spoke with Ellen Sachs, a law professor at USC who is noted in the United States and around the world in her writings in mental health law. She has had schizophrenia since she was 16 years old, and she is willing to consult with the Committee regarding her experiences, and the needs and the understanding from the consumer to the practitioner.

The next meeting of the Committee is with the Northern California Consortium in March.

Part of the meeting is for the group to look at where the proposal is at, critiquing, structuring, and balancing out the issues. It's a complicated issue because we also have to deal with structuring. For example, are we going to require a certain number of units in a specific area and control institutions? Or are we going to determine the overall requirements and allow curricula to be based on the school's philosophy and culture and make sure that content is incorporated appropriately? Schools are already doing that. Schools have content that must

be covered, and then they show what classes cover that content. There are areas such as cultural competency that would be covered across more than one course. The question is then, should the course requirements be specified or should that be left up to the institution? The Committee is trying to figure out how to balance out those issues.

Mr. Riches informed the Board members and public that the next meeting will be held at Golden Gate University in San Francisco on Friday, March 9th and will begin at 10:00 a.m. Immediately following the Committee meeting will be a meeting of the Northern California Consortium of MFT programs.

VI. Presentation by Donna DeAngelis, Executive Director of the Association of Social Work Boards regarding licensure examinations.

Donna DeAngelis could not attend to make the presentation. Roger Kryzanek, President, Board of Directors of Association of Social Work Boards (ASWB), gave an introduction and presentation to the Board regarding the social work licensure examination including development of the examination, review and approval of the exam.

Mr. Kryzanek expressed ASWB's desire for California to become a member. ASWB is composed of 59 members: 49 states, the District of Columbia, the Virgin Islands, and eight Canadian provinces. ASWB's by-laws state that its members must use the ASWB's examination. The exam program is currently utilized by 49 states which makes it much easier for a person to get licensed in one state and move to another state without taking another exam. California left ASWB and began administering its own exam. Mr. Kryzanek explained that it affected those who became licensed in California, moved to other states and applied for licensure in those states.

The reason why ASWB exists is for public protection, to make sure they have qualified professionals and gives consumers a place to go when they have a complaint.

ASWB administers 25,000-27,000 exams annually. The exam is a computer-based program. They contract with the American College Testing, Inc. (ACT). ACT has nine test sites in California.

ASWB has conducted four practice analyses since it started using the exam program. The most recent analysis was completed in 2003. ASWB has five different levels of the exam. The Clinical examination would be the appropriate exam for California. The exam is multiple choice, consists of 170 items on the exam, 20 of which are pretest items.

- *Associate* – Appropriate for paraprofessional social workers. This level uses the Bachelor's examination with a lower pass point.
- *Bachelors* – Appropriate for those who hold a Bachelor's degree in Social Work.
- *Masters* – Appropriate for those who hold a Master's degree in Social Work (MSW).
- *Advanced Generalist* – Appropriate for those who hold a MSW with a minimum of two years of post-degree experience in non-clinical practice.
- *Clinical* – Appropriate for those who hold an MSW with a minimum of two years of post-degree experience in clinical practice. This would be the examination evaluated for possible use in California for LCSWs.

ASWB is concerned about legal defensibility of the exam, validity and reliability. Defensibility relies on reliability and validity. The practice analysis ensures validity. Reliability is achieved

through item writing and maintenance. ASWB interviews and hires item writers. Item writers submit their items, and consultants review and edit the items. If the items are approved, they are sent to the exam committee. The committee reviews the items and content, completes final edits and language clean up. The committee also approves versions of the exam before it goes online. At any given time, there are three versions of the exam online. Each version stays online for four months and then rotated. After a version has been used for 4-5 years, it is taken offline completely and those items are retired.

VII. Discussion and Possible Action to Review the National Examination for Licensure as a Clinical Social Worker

Dr. Russ asked what the BBS would gain by joining ASWB. Mr. Kryzanek replied that BBS would be part of the entire system, sharing information on best practices, and participating in the developing the various services of products that ASWB provides.

Dr. Russ asked what social workers in California would use, other than portability, if BBS did not join ASWB. Mr. Kryzanek responded that portability would be the biggest downside.

Dr. Russ asked how BBS participation can count for the particular cultural issues; how does California compare to other states in the cultural issues; does ASWB collect information on those cultural differences; and how does ASWB measure whether or not those difference are significant.

Mr. Kryzanek responded that other states also believe that they have unique cultural characteristics. New Mexico has legislation that requires in addition to the national exam, one has to pass an exam testing knowledge on diversity. Canada has some of the same concerns as California.

Dr. Russ asked if there is a supervising group who is trained in test development, developing the exam, supervising the process, performing the measurements, and if so, what is their training.

Mr. Kryzanek responded that ASWB contracts with ACT for psychometrics. ASWB has all the resources of ACT available to them. ACT is available in assisting and ensuring that the process is sound and has all the necessary components. Ultimately, the board of directors and Mr. Kryzanek are responsible for ensuring that consultants, item writers, and individuals on the exam committee represent all the experience and knowledge that ASWB wants to have in place.

Ms. Roye asked how ASWB ensures that ethics and integrity are being observed.

Mr. Kryzanek responded that ASWB has a judiciary responsibility to its members and the consumers, the practitioners taking the exam, and the regulatory bodies that this process is working. An independent expert in the field of testing was hired to review the entire exam program. This review will be conducted on a regular basis.

Ms. Roye asked how ASWB protects the integrity of those exam questions when exam questions are developed outside and filtered back in.

Mr. Kryzanek responded that the item writer will develop exam questions at their home or office, and submits them to a consultant. The consultant will send it back for edits if necessary.

After the necessary edits, the consultant will forward to the exam committee. These items are sent through secured mail. Once ACT receives the exam items, only a few people handle them.

Dr. Russ inquired on the costs for the Board to evaluate this.

Mr. Riches replied that there would be the costs with assembling subject matter experts and one Board member on that committee and retaining the services of a psychometrician. OER does not have the capacity to take on this additional work. It may be approximately \$10,000 - \$20,000 to begin the contract, and pay the costs of travel. This would involve the experts traveling to ASWB and addressing security concerns on transferring exam data and exam items. BBS has the resources in the upcoming fiscal year.

Ms. Roye asked how ASWB encourages diversity and cultural sensitivity?

Ms. Kryzanek responded that ASWB represents diversity through the diverse selection of members of its board. The exam is based on information they receive from practitioners.

Janlee Wong, Executive Director of the National Association of Social Workers (NASW), stated that California is excluded from the national loan repayment program for Social workers, because one of the criteria for that program is the national exam. On the cultural diversity issue, the statistics that the current Board aggregated is comparable to those of ASWB. Mr. Wong addressed the need of qualified social workers in California. He encouraged the Board to investigate the information to make an informed decision.

DR. IAN RUSS MOVED TO PURSUE AN INVESTIGATION ON THE ASWB EXAM, AND ALSO RECOMMENDED JOAN WALMSLEY TO BE ON THE INVESTIGATORY COMMITTEE. VICTOR PEREZ SECONDED, AND THE BOARD CONCURRED TO PURSUE AN INVESTIGATION ON THE ASWB EXAM.

V. Report of the Consumer Protection Committee

A. Recommendation #1 – Amend Business and Professions Code Sections 4980.01 and 4996.14 Regarding Exempt Practice Settings

Mona Maggio presented the Committee's recommendation to the Board, and provided background, history, and the Committee's discussion.

The Committee recommended that the Board sponsor legislation to amend Business and Professions Code Sections 4980.01 and 4996.14 to standardize exempt settings between the Licensed Clinical Social Worker (LCSW) and Marriage and Family Therapist (MFT) statutes.

The LCSW and MFT statutes specify certain types of organizations, referred to as "exempt settings," whose employees are not required to have a license or a registration in order to perform clinical social work or marriage and family therapy within the scope of their employment. These exempt settings have been listed in statute from the time the Board began licensing clinical social workers in 1968. This statute has remained the same throughout the years. Two types of exempt settings were listed in the MFT statute when the Board began licensing MFTs, also in the late 1960's. These were institutions

both nonprofit and charitable, and accredited educational institutions. Governmental agencies were later added to the list of exempt settings in the MFT statute.

The MFT statute is somewhat narrower and better defined, and has been used as the basis for the proposed language. The proposed changes would remove the following as exempt settings in the LCSW practice act:

- Family or children services agencies
- Private psychiatric clinics
- Nonprofit organizations engaged in research and education

There are several reasons to standardize exempt settings. The scopes of practice for MFTs and LCSWs are very comparable. For purposes of administrative simplicity, standardization and better-defined exemptions would be very helpful. Additionally, most exempt settings require licensure anyway for reimbursement reasons. This proposal would also enhance consumer protection by requiring licensure for persons in additional settings.

Mr. Wong stated that he was curious as to why a survey was not conducted, polling those who will be removed from the exempt settings.

Mary Riemersma, Executive Director of the California Association of Marriage and Family Therapists (CAMFT) supported the proposed change.

DR. RUSS MOVED, KAREN ROYE SECONDED AND THE BOARD CONCURRED TO AMEND BUSINESS AND PROFESSIONS CODE SECTIONS 4980.01 AND 4996.14 REGARDING EXEMPT PRACTICE SETTINGS.

B. Recommendation #2 – Amend California Code of Regulations Section 1887.2 Regarding Exceptions to Continuing Education Requirements

Ms. Maggio presented the recommendation and provided background, history, and the Committee's discussion.

Section 1887.2 of Title 16, Division 18 of the California Code of Regulations sets forth continuing education (CE) exception criteria for Marriage and Family Therapist and Licensed Clinical Social Worker license renewals.

Subdivision (a) of the regulation sets forth the 18 hours of CE requirement for initial licensees, while subdivision (b) sets forth the CE exemption for those whose licenses are in inactive status.

However, in reviewing the language under subdivision (c), staff has recommended changes in order to clarify and/or better facilitate the request for exception from the CE requirement process.

- Adding language requiring that a written request for exception be submitted to the board a minimum of 60 days prior to the expiration date of the license
- Adding language stating that, if approved by the board, a request for exception shall be valid for only one renewal period

- Similar to subdivisions (c)(1) and (c)(2), adding language under subdivision (c)(3) requiring that a licensee or immediate family member had a disability for at least one year in order to be granted an exception
- After the "disability" definition under subdivision (c)(3), adding additional language that defines "major life activities" and "substantially limiting impairment"
- Adding language requiring that an explanation of how the disability substantially limits one or more major life activities be provided
- Adding additional clarifying language

Staff has also drafted a request for continuing education exception form in order to better facilitate the request process.

The Committee recommended that the Board review the proposed regulatory language and request for exception form and provide preliminary approval so that staff may pursue the regulatory change process.

Benjamin Cauldwell, American Association for Marriage and Family Therapy (AAMFT), asked how often do requests for exception to the CE requirement come to the Board. Ms. Maggio replied that staff receives many requests for an exception to CE requirements. Many of those requests are from individuals who are disabled or are a caregiver of a disabled family member.

Ms. Riemersma supported the recommendation and added that many therapists are reluctant to put their licenses on inactive status, even if they are not able to practice.

Mr. Perez expressed his concern regarding the language "at least one year," stating that it was inflexible and excessive. Mr. Perez suggested a shorter period of time, such as six months.

Dr. Russ agreed with Mr. Perez.

After some discussion, Christy Berger suggested that if the idea was to shorten the period to six months, then that period must take place within the second year of the renewal period instead of the first year of the renewal period.

Ms. DiGiorgio motioned to accept Ms. Berger's recommendation, and Mr. Stein seconded. Mr. Perez and Dr. Russ opposed the motion.

Further discussion and clarification took place.

VICTOR PEREZ MOVED TO ACCEPT THE PROPOSED LANGUAGE WITH AN AMENDMENT TO SECTION 1887.2(C)(3) FROM ONE YEAR TO NINE MONTHS. JOAN WALMSLEY SECONDED, AND THE BOARD CONCURRED TO ACCEPT THE PROPOSED LANGUAGE AS AMENDED.

C. Strategic Plan Update

Ms. Maggio reported that the enforcement unit held its first training in January for Subject Matter Experts (SME). Forty-one licensees from all thereof the professions were invited and 35 of those individuals attended. A representative from Division of Investigation (DOI) and from the Attorney General's Office attended. Both gave an overview of the SME's responsibilities to the Board and the administrative hearing process. Staff gave an

overview of the complaint process. Two of four enforcement analysts completed the National Certified Investigator Training (NCIT) through the Counsel on Licensure, Enforcement, and Regulation (CLEAR). Enforcement staff is stepping up to work the in-house investigation since DOI is unable to work the cases in a timely manner. The goal is to hold the training program for the SMEs on an annual basis.

D. Enforcement Statistics

Mr. Riches gave a brief overview of the enforcement statistics.

E. Examination Statistics

Mr. Riches gave a brief overview of the examination statistics.

The Board adjourned for lunch at 12:05 p.m.

The Board reconvened at 1:02 p.m.

FULL BOARD OPEN SESSION -- PUBLIC HEARING ON PROPOSED AMENDMENTS TO REGULATIONS

IX. Regulations subject to proposed amendment:

Amend Section 1887.2 – Exceptions From Continuing Education Requirements

Amend Section 1887.3 – Continuing Education Course Requirements

Victor Law, Board Chair, went on the record for the Regulatory Hearing at 1:02 p.m. A quorum of the Board was present. Mr. Law explained that the purpose of the public hearing was to gather oral or written statements and arguments relevant to the regulatory actions proposed by the Board. The regulatory proposals were filed with the Office of Administrative Law and were noticed. Copies of the proposed regulations were sent to interested parties.

Mr. Law stated that the purpose of this proposal was to reduce limitations with respect to the maximum amount of continuing education (CE) hours that a licensee can earn throughout self-study courses during his/her initial license period and all subsequent license renewal periods.

Mr. Law stated that the Board currently allows a licensee to earn up to six hours of CE through self-study courses during the initial license period and up to 12 hours of CE through self-study courses during all subsequent license renewal periods. This proposal would change those maximum hour limitations to 9 and 18 hours.

Mr. Law asked if anyone in the audience wished to testify. Nobody testified.

The hearing was closed at 1:05 p.m.

Mr. Law moved agenda item XII to precede agenda item X.

XII. Review and Possible Action on Proposed Amendments to Sections 1805, 1806, 1833.3, 1816, 1816.1, 1816.2, 1816.4, 1816.6, 1854, 1855, 1856, 1857 & 1858 Regarding Application Files, Fees, and Licensed Educational Psychologists (LEP)

Dr. Sean Surfas, California Association of School Psychologists (CASP), commented that CASP strongly supports continuing professional development. However, CASP is concerned that 60 hours every 24 months is excessive. MFTs and LCSWs are required to complete 32 hours every two years. CASP suggests that continuing education requirements for LEPs are the same as MFTs and LCSWs.

Dr. Surfas stated that CASP is also concerned with Section 4989.205 due to the six-year of statute of limitations placed on experience required to apply for the license. This excludes experienced psychologists who apply because their supervised internship occurred more than six years ago. CASP would like to see language changed so that supervised internships could be more than six years. CASP does support the three-year experience requirement.

One of the items in SB 1475 is the actual degree name. Many members have master level degrees named in counseling without guidance. There is a masters degree in counseling and guidance. Many members have a masters degree in counseling alone. The degree title was in effect for more than 25 years in the California State University system; school psychology programs should be recognized.

Another concern is that Sections 4989.34(b) exempts school psychologists credentialed after July 1, 1994 from the 60-hour requirement. However, in the same legislative session, the Legislature eliminated the requirement for continuing professional development for all credentialed school employees. LEPs who completed their internships less than 6 years ago, would not have to ever meet the continuing education (CE) requirements according to SB 1475.

Mr. Riches started that most of the issues that Dr. Surfas addressed are implicated by the Board's statutory rewrite for educational psychology last year. Those issues will be on the Consumer Protection Committee agenda in April for consideration. Those issues are not included here because this is largely clean up to some expired regulatory language. Recent actions by the Commission on Teacher Credentialing and Dr. Surfas' presentation indicate that the Board needs to revisit the CE requirements that were put in that statute. The CE requirement will not become effective until the Board goes through the rulemaking process.

Dr. Surfas added that the supervision requirements also require supervision to be provided only by an LEP. However, 95% of those sitting for licensure have been supervised by credentialed school psychologists.

Mr. Riches stated that this discussion should be referred to the Consumer Protection Committee, chaired by Judy Johnson.

DR. IAN RUSS MOVED, JOAN WALMSLEY SECONDED, AND THE BOARD CONCURRED TO APPROVE THE ADOPTED LANGUAGE AS AMENDED.

X. Review and Possible Action on Proposed Amendments to Sections 1833.1 & 1870 Regarding Supervisor Qualifications

Justin Sotelo presented a brief background of the proposed amendments. This is a proposal that had been before the Policy and Advocacy Committee for preliminary approval. There was a public hearing at the November Board meeting. There were some minor modifications made to the language, which were incorporated into this proposal that was noticed for a 15-day period. No comments were received during that period. Staff is recommending adoption of this regulatory process. The Board is asked to provide final approval to this proposal so that staff may complete the regulatory change process.

There was no public comment.

DR. IAN RUSS MOVED, AND DONNA DIGIORGIO SECONDED, ONE MEMBER OPPOSED, AND THE REMAINING MEMBERS CONCURRED TO APPROVE THE ADOPTED LANGUAGE AS AMENDED. MOTION APPROVED BY VOTE OF 7-1.

XI. Review and Possible Action on Proposed Amendments to Sections 1816.7, 1887.7, 1887.75 & 1887.77 Regarding Continuing Education Providers

Mr. Sotelo presented a brief background of the proposed amendments. This proposal would modify the continuing education (CE) provider regulations. This is a proposal that had been before the Budget and Efficiency Committee for preliminary approval. There was a public hearing at the November Board meeting. There were some minor modifications made to the language, which were incorporated into this proposal that was noticed for a 15-day period. No comments were received during that period. Staff is recommending adoption of this regulatory process. The Board is asked to provide final approval to this proposal so that staff may complete the regulatory change process.

Mr. Cauldwell stated that there was a conflict in the language of Sections 1887.7(e) and 1887.75, claiming that these sections conflicted each other.

Ms. Riemersma stated that she did not see any conflict in language and interpreted the language in both sections.

DR. IAN RUSS MOVED, DONNA DIGIORGIO SECONDED, AND THE BOARD CONCURRED TO APPROVE THE ADOPTED LANGUAGE AS AMENDED.

XIII. Discussion and Possible Action to Sponsor Legislation to Accept Degrees Conferred by Bureau of Private Post-secondary and Vocational Education approved schools as Qualification for Licensure as a Marriage and Family Therapist

Mr. Riches gave a detailed background on this proposal. He explained that current law recognizes three separate entities for approving/accrediting marriage and family therapy degree programs including the Western Association of Schools and Colleges (WASC), Commission on Accreditation of Marriage and Family Therapy Education (COAMFTE), and the Bureau of Private Postsecondary and Vocational Education (BPPVE). In order to qualify for registration as a marriage and family therapist intern or a licensed marriage and family therapist, the candidate must have a qualifying degree from a program approved/accredited by one of three organizations.

On September 30, 2006 the Governor vetoed AB 2810. This bill, among other elements, extended the sunset date for the Bureau of Private Postsecondary and Vocational Education for one year to July 1, 2007. The veto of this legislation has the effect of repealing both the BPPVE and the underlying statutes that govern the approval of thousands of educational institutions including 21 programs offering degrees in marriage and family therapy.

Absent further legislative action, the Board will be unable to accept degrees conferred by these 21 programs on or after July 1, 2007. The administration and legislative leadership are working on reform proposals to establish a new law and administrative entity to succeed the BPPVE.

Mr. Riches explained the two things that this proposal will do: 1) It allows the Board to recognize degrees from BPPVE approved schools for a limited period of time. The BPPVE grants approvals/renewals for degree granting institutions that generally last from three to five years. The proposal would allow the Board to accept degrees granted within the time frame of the most recent approval/renewal granted to the degree program. 2) Allows the Board to recognize degrees granted by universities accredited by other regional accrediting bodies. Current law only allows the Board to accept degrees from programs accredited by WASC which accredits programs in California and other western states. Comparable accrediting bodies perform the same task in other regions of the country. Some programs in California are branches of universities that are accredited by one of these other accrediting bodies in another state. Current law requires that those programs be approved by the BPPVE. This proposal would eliminate that requirement.

The Department of Consumer Affairs is sponsoring a bill to contain similar fixes for other programs in the department. This will be included in that urgency measure. Urgency measures take effect once the Governor signs it. This could be in place by July 1st. However, any urgency measure requires a two-thirds majority vote.

Staff recommended that the Board sponsor emergency legislation outlined in this proposal.

George Ritter, Legal Counsel, added that if BPPVE sunsets in July, those schools can continue to operate, however, they will continue to operate in an unregulated and unapproved arena.

Ms. Riemersma commended staff on the quick response and trying to come to some resolution. She stated these were great proposals. Ms. Riemersma recommended striking "regional" from Section 4980.40(a). She explained that the U.S. Department of Education has other accrediting entities that are not necessarily regional accrediting bodies. For example, some faith-based schools cannot meet the requirements for some regional accrediting bodies; however, they can for a certain category that is recognized through the Council for Higher Education Accreditation (CHEA).

Mr. Riches stated that staff is open to hearing about the other accrediting bodies; however, staff and the Board have not looked at those accrediting standards. There will be an opportunity to have those accrediting agencies come and talk to the Board, discuss their accrediting standards, so that the Board can make an informed judgment.

In response to Ms. Riemersma's suggestion regarding the proposed language, Mr. Riches stated that the exclusion was intentional. The inclusion of regional accrediting bodies was intended to recognize the other regional accrediting entities, knowing that staff will need to look at the programmatic accreditation.

Mr. Cauldwell also thanked the Board for acting quickly on this. AAMFT is in support of the proposal in 4980.40(a). However, he recommended changes to the language. Mr. Cauldwell referred to Section 4980.40(a) stating that COAMFTE is redundant because one of the conditions for COAMFTE accreditation is regional accreditation. He stated that Section 4980.40(c) is harmful, and explained that what that has done traditionally was meant for applicants from other states. If they graduated from a COAMFTE accredited program, their degree is presumed to have met the content requirements that are outlined in Section 4980.40(a). He recommended leaving Section 4980.40(c) unchanged.

Dr. Paul Boatner, Academic Vice President of Southern California Seminary, presented the background on his institution and its accreditation. Southern California Seminary is an institution that has been approved through BPPVE. Under the U.S. Department of Education, CHEA grants authority to organizations, including regional organizations, to grant accreditation. There are other accrediting associations that are approved by CHEA, one of which is the organization that accredits the Southern California Seminary. That organization is the Transnational Association of Christian Colleges and Schools (TRACS). TRACS has 230 standards of accreditation. Dr. Boatner requested that there be recognition of other accrediting agencies approved by CHEA. Limiting the recognition of accrediting agencies to regional accreditations is an issue. Dr. Boatner suggested adding language to 4980.40(a) to state "...or other appropriate accrediting agencies approved by the Council for Higher Education Accreditation."

Dr. Russ asked if the Board staff can request from each of the accrediting agencies to submit their criteria and to demonstrate that the 42 WASC points are handled in there requirements?

Mr. Riches stated that programmatic accrediting entities are far more particular than the regional bodies. For the programmatic accrediting entities, it is a case-by-case analysis. It would be an opportunity for the accrediting body to petition to the Board to request that they are recognized. Regardless of what happens, it is either going to require a change in regulation or statute.

Dr. Russ asked if the Board can request the accrediting entities to submit this information before the next committee meeting in a particular format? Paul responded yes.

Mr. Ritter suggested that when the legislation is drafted, not to limit it to specifics. The language can state that the Board is authorized to include other approved accrediting agencies that it sees fit at its discretion.

Neil King, President of Antioch University of Los Angeles, briefly commented. His organization has been accredited by the North Central Association. Mr. King thanked the Board for acting quickly on this matter.

Jack Mayhall, Chairman of the MFT Department at the California Graduate Institute, briefly commented. His program has 225 students who will not meet the July deadline. Mr. Mayhall asked the Board to consider how it's going to contain these people while agencies obtain their accreditation with other accrediting bodies. He also stated that this is an opportunity to have uniformity with other states.

David Sitzler, Psychology Department Chair at Argosy University in Santa Monica, thanked the Board for moving quickly on this issue. Argosy University has 183 students are affected by this change. Their regional accrediting body is the Higher Learning Commission (HLC).

Barry Lord, Program Director for Southern California Seminary, clarified that there are 10 nationals and six regionals throughout the United States. The schools can have franchise campuses where they can go to other regional areas and provide schooling. All of these are approved by the U.S. Department of Education, and under that is a branch known as CHEA. This issue will put schools out of business. Mr. Lord thanked the Board for their efforts.

Mr. Wong suggested that the schools that are not directly affected by this, to adopt the students who are in these schools and are affected by this so that they can complete their degrees. Mr. Wong also suggested that when the urgency is over, the thought should be given to the issue of generalist school accreditation versus program/specialist accreditation.

Daniel Litteral, General Counsel of University of Phoenix, expressed his appreciation to the Board and staff for the time taken on this issue. University of Phoenix is the largest private accredited university. University of Phoenix has approximately 800 students throughout the campuses in California. University of Phoenix is a regionally accredited institution through the Higher Learning Commission. There are campuses in other states, including Canada and Puerto Rico. He is supportive of the language drafted by staff.

Mr. Law suggested to the students who are affected by this to contact their local representatives.

Mr. Perez requested to hear from staff as to the suggested changes in the language.

Mr. Riches responded that he was comfortable with including the regional accreditation language and uncomfortable about passing on any programmatic accreditation until there is an opportunity to evaluate those more carefully. His suggestion was to not alter the provision. On comments from AAMFT, the changes on the COAMFTE strictly regarded as organizational. It doesn't affect how the regional bodies and approvals are handled. He stated it could be left as is for now. Mr. Riches recommended that the Board move forward in recognizing regional accreditation, continuing recognition of approvals proposed, and rescind the changes on COAMFTE if it's going to create discomfort with this proposal given the speed in which it is going to move.

Mr. Ritter added a procedural point. Because this is emergency legislation, if it goes forward, it's going to be subject to a lot of review. There may be suggestions for technical changes in the language. Therefore, he suggested to either delegate to Mr. Riches to make those changes, or if necessary, to hold a teleconference meeting.

VICTOR PEREZ MOVED, JOAN WALMSLEY SECONDED, AND THE BOARD CONCURRED TO SPONSOR LEGISLATION CONSISTENT WITH THE PROPOSED RECOMMENDATIONS.

Meeting adjourned for break at 2:25.

Meeting reconvened at 2:32 p.m.

XIV. Report of the Policy and Advocacy Committee

- A. Recommendation #1 – Amend Sections 4980.80 and 4980.90 to increase portability of marriage and family therapist licenses**

Donna DiGiorgio, Committee Chair, gave background regarding this proposal. This proposal would:

1. Modify the statutory requirement for a two-semester or three-quarter unit course in California law and ethics.
2. Clarify in statute that the Board will consider hours of supervised experience gained in the 6-year period prior to the issuance of the applicant's original MFT license from another state.
3. Current law allows out-of-state applicants to make up coursework or units in the MFT core curriculum as defined in Section 4980.40. The core MFT courses, including practicum units, should be required as part of any qualifying degree, but any other units should be permitted to be made up. A change that would permit that flexibility for out-of-state applicants is proposed for required units or coursework other than the core MFT curriculum.
4. Staff will work on a proposal for a method to consider documented practice experience while licensed in another state that will count in place of supervised experience requirements.

The Committee recommended that the Board sponsor legislation to increase portability of MFT licenses.

Ms. Riemersma stated that this would increase portability and urged the Board to continue to work on ways to increase portability. Eighteen hours in law and ethic is reasonable.

DR RUSS MOVED, DONNA SECONDED AND ALL CONCURRED TO APPROVE THE RECOMMENDATION.

B. Recommendation #2 – Repeal Section 4980.40(i) relating to registration as a marriage and family therapist intern

Ms. DiGiorgio gave background to this proposal, explaining that this law, which provided an alternative qualifying method for registration as an MFT intern, was outdated. The Committee recommended to the Board to sponsor legislation to eliminate the alternative qualifying method for registration.

KAREN ROYE MOVED, VICTOR PEREZ SECONDED, AND THE BOARD CONCURRED TO APPROVE THE RECOMMENDATION.

C. Recommendation #3 – Sponsor Legislation to increase Health Professions Education Foundation surcharge and reduce license renewal fees

Ms. DiGiorgio gave a very brief background of this proposal. In order to address the increasing fund balance, the Committee considered reapportioning the revenue by reducing renewal fees and increasing the licensing renewal surcharge which will go to the loan repayment program. The Governor's budget released in January 2007 reflected an increase in the Board's expenditure authority. This increase was not anticipated by Board staff and reflects a mix of price increases from recent labor contracts and increases in costs from the Division of Investigation.

Mr. Riches explained that if the Board goes forward to preserve the \$40 reduction in fees proposed earlier. This option would trigger repayment of the General Fund Loan

beginning in the 2011-12 fiscal year. Staff has assumed repayment over a three-year period. Such action would, based on current assumptions, require action to raise fees beginning in the 2015-16 fiscal year to bring revenues into balance with expenditures.

Mr. Riches suggested that the Board wait until regulations has passed putting a program in place.

KAREN ROYE MOVED, DONNA DIGIORGIO SECONDED, AND THE BOARD CONCURRED TO APPROVE TO SPONSOR LEGISLATION, BEGIN THE REGULATION PROCESS, AND PROVIDE DIRECTION TO INITIATE ONCE OPERATING PROGRAM IS IN PLACE.

D. Recommendation #4 – Amend board policy on succession of officers

Ms. DiGiorgio gave background to this proposal. In February 2005, the Board adopted a policy which required the required the election of officers by March of each year. That provision was changed in Senate Bill 1475 to require election of officers before June 1st of each year.

The Committee recommended amending the policy to reflect the new date for electing officers.

JUDY JOHNSON MOVED, VICTOR PEREZ SECONDED, AND THE BOARD CONCURRED TO APPROVE THE RECOMMENDATION.

E. Recommendation #5 – Establish a board position on legislation to establish licensure for professional counselors

Mr. Riches gave background and discussion to this proposal. The Committee met and heard a presentation by the California Coalition for Counselor Licensure (CCCL) supporting legislation this year to establish licensing for professional counselors (LPC) in California. The Board heard their proposal in 2005. That proposal did not succeed in the Legislature and was opposed by the Board. The CCCL came back in the fall indicating that they were going to sponsor legislation this year. They brought their proposal before the Committee in January. The Committee expressed a conditional support for the proposal.

The proposal requires a masters degree, a minimum of 48 units, 3000 hours of supervised post graduate experience. It is modeled very closely on the requirements for marriage and family therapy. It requires passage of a professional licensing examination. It has a requirement that two members of the Board are professional counselors and 2 members of the Board are public members, which would result in a 15-member Board at BBS.

This proposal includes two different methods by which a person could be granted a license via grandparenting during the first year. One of the methods requires possession of a MFT license and a degree that meets LPC coursework requirements. The other method requires all of the following:

- A 48 unit qualifying degree that meets the same requirements as for regular LPC licensure, including a complete practicum.
- Two years of full time post-degree counseling experience that includes at least 1,000 hours of supervised direct client contact.

- Passage of two national examinations.

The following issues related to grandparenting are still outstanding:

- The Board will not have a chance to have a psychometrician evaluate examination(s) required for grandparenting prior to the grandparenting period. Staff believes that persons licensed through grandparenting should be recertified after a 6-year period by taking current licensing examinations.
- Determine whether the Board will accept the Certified Rehabilitation Counselors Examination (CRCE) along with the National Clinical Mental Health Counselor Examination (NCMHCE) for meeting grandparenting examination requirements.

Mr. Riches stated that although he is ambivalent in starting up a new licensing program, he is comfortable that the CCCL's proposing is meets the objectives of staff.

Ms. Riemersma stated that this is a profession with a very broad scope of practice. According to the document provided by CCCL, the profession appears to do exactly what psychology does. Ms. Riemersma asked if this is the appropriate Board to regulate this profession, or should it be the Board of Psychology? She suggested that the Board not take a position on this proposal remain neutral. This has not gone through the sunrise process. Ms. Riemersma disagreed with the claim of the shortage of mental health professionals. LPCs, like MFTs, will run into the difficulty of Medicare reimbursement. LPCs can already work in exempt work settings. This bill will allow the discipline to engage in private practice. Ms. Riemersma did not agree that grandparenting standards are sufficient. She expressed that the Board should not regulate an additional profession until an occupational analysis is performed.

Mr. Cauldwell stated that he shares the same concerns regarding scope of practice. He encouraged the Board to wait for legislative sunrise process before taking any stand.

Dean Porter, President of CCCL, introduced Dr. Gregory Jackson, Dr. Leah Bru, and Jan Cummings. These individuals are CCCL board members.

Dr. Gregory Jackson gave his background. He stated that the LPC is recognized in 48 states where licensure exists and the numbers exceed 95,000 licensees. LPCs are master and doctoral level trained mental health providers; trained to treat mental, behavioral, or emotional problems and disorders; employed at community health centers, agencies, and organizations; and covered by managed care organizations and health plans. This is an established profession with its own ethics and standards of practice set forth by the American Counseling Association (ACA). Recently the ACA and the American Mental Health Counselors Association worked together on a bill that just passed both the U.S House of Representatives and the Senate, and signed by the President, that would include counselors as providers in the Department of Veteran Affairs. Currently the American Counseling Association is working on legislation that would add LPCs and MFTs to Medicare's lists of covered providers for mental health services.

Dr. Leah Bru, Professor at California State Fullerton, gave her background. LPCs are qualified through curriculum from Council for Accreditation of Counseling and Related Educational Programs (CACREP). Education and training are rigorous, and focuses on wellness and development as a foundation for treatment. The national standard for licensure requires CACREP core plus psychotherapy. Dr. Bru gave an overview of the requirements for licensure. Currently, there are 47 public and private universities in

California that offer masters degrees in counseling, but cannot get licensed when they graduate.

Jan Cummings gave her background. Ms. Cummings stated that there are three reasons why California needs LPCs: 1) to address shortages of mental health workers, 2) to broaden the accessibility of mental health services in order to meet an increasing need of the unserved and the underserved communities, and 3) for consumer protection. LPCs were involved in the Hurricane Katrina efforts. Over 20% of the folks who involved were from ACA. Over 50% of the student population is non-white. Of those, 27 percent are Latino, 13 percent are Asian, 8 percent are African-American, and 3 percent are Native American.

Ms. Roye asked why people from different cultures are choosing this practice.

Dr. Bru responded that many minorities do not look upon therapy as an acceptable profession because of the stigma relating to therapy within their cultures. Being involved in a counseling setting is less threatening; therefore, it attracts people of ethnicity.

Ms. Walmsley asked if the counselors are required to have a license to work in agencies. Ms. Cummings responded that there are some jobs that do not require the license, and there are other jobs that require clinical work and require licensure.

Ms. Walmsley asked if this license would permit the LPC to work as schools counselors. Dr. Jackson responded yes, provided that they completed 3000 post-masters supervised hours, met the requirements of their masters degree in their specialty area, and completed the 600 hours required by the BBS.

Ms. Walmsley remarked that this would give them a license to practice independently, because the school districts do not require a licensed school counselor. Ms. Porter agreed.

Ms. Porter closed and referred to highlights of their proposal, referring to handouts provided. She gave an overview of the reasons that California needs LPCs: 1) to protect consumers, 2) to address the mental health workforce shortages, 3) to provide more access to the underserved, 4) to enable California to participate in the federally funded programs, 5) to allow portability for counselors coming to California, and (6) to achieve parity and equity among California professionals who are educated and trained.

Ms. Riemersma referred to the language in Section 4989.14(a), stating that it was written to only allow counselors to engage in psychotherapy. She urged the Board to review this section because it is already in the psychology licensing law and gives exception to the other disciplines to practice psychotherapy, and that this conflicted with another section.

Mr. Riches responded that a similar conflict exists in the other practice acts, which begins by declaring an exclusive domain of activity and proceeds to outline exemptions. It is not to impair their ability to provide services under that license.

Mr. Wong stated that this is premature and needs more development before the Board approves this proposal. He clarified that this is not a bill; it is not an official version and does not have an author. This document can be modified or amended by anyone, and submitted as legislation.

Mr. Riches responded that any bill could be changed up until the Governor signs it. Staff makes sure to follow the legislation, and makes sure that if it does change, staff will communicate that with the Board. And it will be determined if support or opposition is still appropriate. In regards to the scope of practice, Mr. Riches recommended to the Board to look closely at statutes of the three scopes of practice.

Dr. Russ stated that if these counselors are qualified, they should not be denied. If the programs are gathering a greater diversity, it increases the chances of them going back to their communities.

Mr. Perez stated that there is downside to the grandfather clause, and there is a concern for consumer protection during the 6-year period prior to recertification. Mr. Perez indicated that he was not prepared to take a stand on this issue.

After further discussion, Mr. Law tabled this item until the next Board meeting.

F. Preliminary results from demographic survey of board registrants and licensees

Handouts containing this information were provided.

G. Regulation Update

Mr. Sotelo referred to the update in the meeting materials, which is an overview on the regulation proposals. Most of it was addressed in the agenda.

F. Legislation Update

Mr. Sotelo referred to the update in the meeting materials, which is an overview on the legislation proposals.

I. Strategic Plan Update

Mr. Sotelo referred to the update in the meeting materials, which is an overview on the Strategic Plan update.

J. Budget Update

Mr. Riches briefly presented from the projections outlined in the meeting materials. Current projections indicated a year-end balance of approximately \$84,000. He referred to the increase in the fiscal year 2007-2008 budget that was proposed. A large portion of that are the billings from DOI. There was nothing particular to report on the fund condition.

K. Quarterly Licensing Statistics

Mr. Riches briefly presented the licensing statistics and spoke on backlog and personnel effects on the statistics. Two of three full-time cashiers left at the same time, and two of five evaluators left at the same time, which resulted in a backlog.

XV. Public Comment for Items Not on the Agenda

No public comments.

Meeting was adjourned at 4:47 p.m.

SAMPLE

Thursday, February 15

MEMBERS PRESENT

Victor Law, Chair, Public Member
Gordonna DiGiorgio, Public Member
Judy Johnson, LEP Member
Renee Lonner, LCSW Member
Victor Perez, Public Member
Karen Roye, Public Member
Dr. Ian Russ, MFT Member
Howard Stein, Public Member
Joan Walmsley, LCSW Member

MEMBERS ABSENT

D'Karla Leach, Public Member

STAFF PRESENT

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
George Ritter, Legal Counsel
Christina Kitamura, Administrative Assistant

GUEST LIST

On File

FULL BOARD OPEN SESSION

Victor Law, Board Chair, called the meeting to order at 8:59 a.m. Christina Kitamura called roll and a quorum was established.

**XVI. Petition for Reinstatement
A. Peggy Reid LCS 18337**

The Board heard a petition for reinstatement, requested by Peggy Reid. The hearing was presided over by Administrative Law Judge Donald P. Cole. The hearing began at 9:00 a.m.

FULL BOARD CLOSED SESSION

XVII. Pursuant to Government Code Section 11126(c)(3) to Deliberate on Disciplinary Decisions

The Board met in closed session to deliberate its decision in this matter pursuant to Government Code Section 11126(c)(3).

Meeting was adjourned at 10:14 a.m.

SPEC: CHIROPRACTIC CONSULTANT, BOARD OF CHIROPRACTIC EXAMINERS
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

Schematic Code: EV20
Class Code: 9964
Established: 4/18/95
Revised: --
Title Changed: --

CHIROPRACTIC CONSULTANT, BOARD OF CHIROPRACTIC EXAMINERS

DEFINITION

Under general direction, to serve as a consultant to the Board, its staff, and the Chiropractic Quality Review Panels regarding the professional competence of chiropractors; to provide chiropractic expertise in the review of chiropractic investigations and evaluations of the professional conduct of licensees in relation to the requirements of the law; to assist in the preparation of administrative or court actions by providing chiropractic expertise; to serve as an expert witness; to monitor probationers of the Board; and to do other related work.

TYPICAL TASKS

A Chiropractic Consultant, Board of Chiropractic Examiners, makes recommendations based on the review of complaints against chiropractors to assure compliance with laws relating to professional and individual competence; consults with the Executive Secretary in the preparation of evidence for presentation before the Board of Chiropractic Examiners and Chiropractic Quality Review Panels; consults with the Attorney General's Office Review Panels; consults with the Attorney General's Office in the preparation of legal actions; assists in the interview of witnesses and interested parties to secure information relating to chiropractic practices; interprets the chiropractic significance of information and evidence; makes recommendations regarding and assists in obtaining information and evidence which requires the immediate knowledge of professional chiropractic to secure; conducts audits of chiropractic office records to determine if the records, x-ray, and laboratory findings support the actual diagnosis and treatments performed, and to assure compliance with staff, organization, and record-keeping provisions of the Business and Professions Code; confers with and obtains the cooperation of recognized chiropractic consultants concerning the specialized practices of chiropractic and special or unusual chiropractic procedures and techniques; represents the Board before professional or lay groups; assists investigators and office staff in monitoring activities and performance of licensees who have been placed on probation by the Board; and prepares and dictates correspondence.

MINIMUM QUALIFICATIONS

Possession of a valid license for the practice of chiropractic in California as determined by the California Board of Chiropractic Examiners.

and

Experience: Five years of experience, within the last seven years, in the practice of chiropractic.

KNOWLEDGE AND ABILITIES

Knowledge of: Chiropractic, including recent developments and practices; record-keeping practices; provisions of the Business and Professions Code relating to the practice of chiropractic and the laws, rules and regulations of the Board of Chiropractic Examiners relating to chiropractic practice and continuing education; chiropractic specialties; principles, aims, methods and trends of contemporary chiropractic education; administration, curriculum, and procedures of providers of continuing education services.

Ability to: Conduct effective interviews; exercise sound chiropractic judgment in reviewing conflicting chiropractic reports and preparing opinions; analyze problems and recommend effective action; dictate correspondence; prepare reports; communicate effectively.

SPECIAL PERSONAL CHARACTERISTICS

Demonstrated ability to work cooperatively with others; emotional stability; integrity; initiative; good judgment; dependability; tact; courtesy; high professional ethics; willingness to travel throughout the State.

□

DUTY STATEMENT

GS 907T (REV. 1/98)

SHADED AREA FOR HUMAN RESOURCES ONLY**INSTRUCTIONS:** Refer to the Payroll and Personnel Procedures Manual (PPPM) for Duty Statement Instructions.

RPA-

006-CHIRO

EFFECTIVE DATE

1. DGS OFFICE OR CLIENT AGENCY Board of Chiropractic Examiners	POSITION NUMBER (Agency - Unit - Class - Serial) - - - - -
2. UNIT NAME AND CITY LOCATED Chiro Administration - Sacramento	3. CLASS TITLE CHIROPRACTIC CONSULTANT
4. PROPOSED INCUMBENT (If known)	5. CURRENT POSITION NUMBER (Agency - Unit - Class - Serial) 620-110-9964-001

6. BRIEFLY (1 or 2 sentences) DESCRIBE THE POSITION'S ORGANIZATIONAL SETTING AND MAJOR FUNCTIONS
Under the supervision of the Executive Director, the Chiropractic Consultant reviews and evaluates complaints of professional misconduct against licensees. This includes interpreting the chiropractic significance of information and evidence. Specific tasks include, but are not limited to the following:

7. Percentage of time performing duties	8. Indicate the duties and responsibilities assigned to the position and the percentage of time spent on each. Group related tasks under the same percentage with the highest percentage first. (Use additional sheet if necessary)
---	---

ESSENTIAL FUNCTIONS

40%

Provide chiropractic expertise in the review of complaints and evaluations of the professional conduct of licensees in relation to possible violations of the laws and regulations. Respond in writing or by phone to consumers and other governmental or private entities' inquiries and complaints. Answer complex questions pertaining to practice issues and procedures.

25%

Review investigation reports to determine if sufficient evidence exists for administrative action or if further investigation is needed. Consult with deputy attorney general in preparation of administrative actions.

5%

Attend Board meetings to present items of interest relating to enforcement or examination issues.

5%

Prepare regulation language for review and discussion by the Regulation Review Committee.

5%

Review Chiropractic Law and Professional Practices Examination questions for accuracy, and serve as lead consultant in test question development.

5%

Confer with and obtain the cooperation of recognized chiropractic consultants concerning the specialized practices or chiropractic and special or unusual chiropractic procedures and techniques.

5%

Review complaint case to determine if a citation should be issued.

5%

Assist in the review and recommendations for continuing education courses.

9. SUPERVISOR'S STATEMENT: I HAVE DISCUSSED THE DUTIES OF THE POSITION WITH THE EMPLOYEE

SUPERVISOR'S NAME (Print)	SUPERVISOR'S SIGNATURE	DATE
---------------------------	------------------------	------

10. EMPLOYEE'S STATEMENT: I HAVE DISCUSSED WITH MY SUPERVISOR THE DUTIES OF THE POSITION AND HAVE RECEIVED A COPY OF THE DUTY STATEMENT

EMPLOYEE'S NAME (Print)	EMPLOYEE'S SIGNATURE	DATE
-------------------------	----------------------	------

5%

NON-ESSENTIAL FUNCTIONS

Perform other duties as assigned by the Executive Director.

KNOWLEDGE AND ABILITIES

Knowledge of:

Chiropractic, including recent developments and practices; record-keeping practices; provisions of the Business and Professions Code relating to the practice of chiropractic and the laws, rules and regulations of the Board of Chiropractic Examiners relating to chiropractic practice and continuing education; chiropractic specialties; principles, aims, methods and trends of contemporary chiropractic education; administration, curriculum, and procedures of providers of continuing education services.

Ability to:

Conduct effective interviews; exercise sound chiropractic judgment in reviewing conflicting chiropractic reports and preparing opinions; analyze problems and recommend effective action; dictate correspondence; prepare reports; communicate effectively.

DESIRABLE QUALIFICATIONS

SPECIAL PERSONAL CHARACTERISTICS

- Demonstrated ability to work cooperatively with others;
- Emotional stability;
- Integrity;
- Use good judgment and takes effective action
- Dependability and tact;
- Use courtesy;
- High professional ethics;
- Willingness to travel throughout the State.

ADDITIONAL QUALIFICATIONS

- Experience in writing procedures, manuals, and reports
- Proficiency with Microsoft Word, Outlook, Excel, Teale Data System, and Access
- Good organizational skills

WORK ENVIRONMENT, PHYSICAL OR MENTAL ABILITIES

Frequent off-site meetings

Occasional local and statewide travel, often independently

Requires presentations to professional audience

Effectively handle stress, frequent deadlines, and changing priorities

Frequent use of a personal computer and/or laptop and related software applications at a workstation

11. SUPERVISOR'S STATEMENT: I HAVE DISCUSSED THE DUTIES OF THE POSITION WITH THE EMPLOYEE		
SUPERVISOR'S NAME (Print)	SUPERVISOR'S SIGNATURE	DATE
12. EMPLOYEE'S STATEMENT: I HAVE DISCUSSED WITH MY SUPERVISOR THE DUTIES OF THE POSITION AND HAVE RECEIVED A COPY OF THE DUTY STATEMENT		
The statements contained in this duty statement reflect general details as necessary to describe the principal functions of this job. It should not be considered an all-inclusive listing of work requirements. Individuals may perform other duties as assigned, including work in other functional areas to cover absence of relief, to equalize peak work periods or otherwise to balance the workload.		
EMPLOYEE'S NAME (Print)	EMPLOYEE'S SIGNATURE	DATE

Although we recognize that the issues surrounding the review panels are not simple, it is clear that the board must take some action to remedy its noncompliance with its regulation.

are currently using review panels. The osteopathic board and the speech-language board told us that they do not use review panels or other similar review processes. Specifically, the osteopathic board stated that it relies instead on the case reviews by its expert consultants. The physical therapy board stated that it is currently in the process of preparing to implement a quality control program and that its planned process will include board members reviewing closed cases to ensure timely resolutions and consistency in the process.

We recognize that the issues surrounding the review panels are not simple, but it is clear that the chiropractic board must take some action to remedy its noncompliance with its regulation. In determining what that action might be, we believe the board must consider its complaint review process more broadly. As we noted in previous sections of this chapter, the chiropractic board has not developed standard procedures or required management oversight of its complaint process. Therefore, by instituting a stronger system for reviewing and taking action on complaints, the board will be better able to determine what other processes it should add to complement its ability to promptly and appropriately respond to complaints about chiropractors.

The Chiropractic Board's Recently Vacant Chiropractic Consultant Position Leaves a Gap in Its Available Technical Expertise

As noted in the Introduction, the chiropractic consultant position, under the supervision of the executive officer, provided chiropractic expertise to help staff review complaints against and evaluate the professional conduct of licensees who may have violated chiropractic laws and regulations. During our review, we found that the chiropractic board's enforcement process and its staff relied heavily on the chiropractic consultant to complete its reviews and make decisions on complaints and punishment when violations occurred. Because the chiropractic consultant position has been vacant since August 10, 2007, we asked the executive officer to provide his perspective on the impact to operations, especially to enforcement, licensing, and continuing education, of not having technical expertise on staff. The executive officer explained that because of the current budget situation, the chiropractic board is not planning to fill the vacant chiropractic consultant position. He also said that based on the chiropractic board's initial assessment of the enforcement program and the chiropractic consultant position in particular, it had concerns about the duties and use of the position and did not plan to fill the vacancy until a job analysis was conducted. At the same time, board members expressed concerns about filling the position before instituting a significant change in duties.

Instead, the chiropractic board is developing a group of expert consultants or witnesses to bridge the gap in technical expertise. The executive officer anticipates having the written procedures for handling expert consultants and witnesses in place by the end of March 2008 and to begin training staff by July 2008. He also stated that he anticipates that timeliness will not be an issue once internal enforcement staff are fully trained and able to quickly recognize when cases need referral to an expert. Further, the executive officer stated that enforcement staff will actively follow up with the consultants or experts to ensure that reports are provided promptly, and he believes that once the procedures are fully implemented, overall complaint handling times will decrease compared with prior years.

We also asked how the chiropractic board is addressing technical questions that it receives on its Web site, another function previously handled by the chiropractic consultant. The executive officer told us he was temporarily assigning scope-of-practice questions to board members to answer and confirmed that he reviews board members' responses to ensure that they are appropriate. He also stated that this is a temporary process that has been reduced and will be completely discontinued by the end of February 2008. Instead, the executive officer stated that the chiropractic board expects chiropractors, as licensed professionals, to have a clear understanding of the chiropractic scope of practice. Also, consistent with other boards within the Department of Consumer Affairs (Consumer Affairs), the chiropractic board can (1) determine if there is case law related to the question and if there is, provide the answer; (2) determine if there are attorney general opinions related to the question and if there are, provide the answer; (3) determine if there is only one reasonable interpretation of the law and if there is, provide the answer; or (4) if none of these apply, direct the individual to the relevant sections of law and recommend that if the individual still has questions, he or she should consider consulting a private attorney and the chiropractic board will review the opinion as long as it is provided in writing.

The executive officer also told us that licensing staff rarely have questions that need answers from a chiropractor, that the course approval process for continuing education is currently being reviewed to improve effectiveness, and that he anticipates the review and approval process of continuing education courses will be revamped. Finally, he stated that the chiropractic board is looking to incorporate a new structure to address gaps that may or may not include the hiring of a chiropractic consultant.

Although we acknowledge the concerns that the executive officer and board members have expressed about the chiropractic consultant position and the way that it was relied on and used in

The chiropractic board is developing a group of expert consultants or witnesses to bridge the gap in technical expertise.

We encourage the chiropractic board to consider having an expert on staff to ensure that it has invaluable expertise that is readily available to staff rather than having to rely on referrals to outside experts.

the past, we encourage the chiropractic board to consider having an expert on staff. The chiropractic board can establish processes to limit the autonomy of the position while still gaining invaluable expertise that is readily available to staff rather than having to rely on referrals to outside experts. For example, the chiropractic consultant could be used much like legal counsel to provide opinions to the executive officer, who would remain the final decision maker.

The Chiropractic Board Did Not Adequately Control the Use of Expert Witnesses

Chiropractic board policies and procedures for assigning a complaint case to an expert require the chiropractic consultant to conduct a telephone interview to assess an expert's experience and expertise with the relevant procedure or treatment. Performing such an interview before assigning a specific case assists the chiropractic board in ensuring that the expert is qualified and has no conflicts or disqualifying criteria such as personal or financial conflicts of interest, complaint history, or insufficient years of practice.

Our review of five complaints referred to experts revealed no evidence in the files demonstrating that staff performed telephone interviews before assigning the cases to experts. Board procedures do not require staff to document such efforts. In addition, the chiropractic board told us that it does not enter into contracts with experts for services. Such contracts would include standard language that informs contracting parties about their responsibilities regarding conflicts of interest. Further, the chiropractic board does not require staff to obtain documentation from experts attesting that they are free of conflicts of interest. Therefore, we could not confirm whether the staff appropriately assigned the cases we reviewed to qualified experts who are free of conflicts of interest.

Experts did not always complete their reviews within 30 days as expected. According to the chiropractic board's expert procedures, it expects an expert to finish reviewing the assigned case and file a written report within 30 days of assignment. The expert in only one of the four sample cases we examined completed the review and provided a written report within 30 days.¹¹ In two other cases, the experts submitted their reports within 45 days. In the fourth, the expert took more than 200 days to provide a report. Staff told us they perform no follow-up procedures, thus allowing unnecessary delays

¹¹ In another case, the expert review was already in progress on other related complaints when the board referred it; thus, we did not calculate the total days to receive the expert report.

Board of Chiropractic Examiner's Initial Response

To ensure that it has necessary resources to answer technical questions regarding quality of care and improper treatment that often arise, the board should fill and maintain its chiropractic consultant position. In addition, the board should ensure that its chiropractic consultant acts only in an advisory capacity and that the executive officer makes the final decision.

The BCE respectfully disagrees with the recommendation that the Board fills and maintains its chiropractic consultant position. The BCE does not want to limit its initial review of complaints to only one person because he or she would only be able to bring his or her own education, training, and experience to the position. This is too limiting and would inevitably lead to a myopic review of complaints. Additionally, no single consultant would have expertise in each practice style and school of thought plus the specialties within these various practice styles to provide competent expert advice.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING – CORRECTED TIME**

Notice is hereby given that a meeting of the **Legislative Committee** of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008
8:30 a.m.
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Discussion and Possible Action:**

- Assembly Bill 450

Discussion and Possible Action:

- Assembly Bill 1861

Discussion and Possible Action:

- Senate Bill 1402

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****LEGISLATIVE COMMITTEE**

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**NOTICE OF PUBLIC MEETING – CORRECTED TIME**

Notice is hereby given that a meeting of the Legislative Committee of the Board of Chiropractic Examiners will be held as follows:

March 27, 2008
8:30 a.m.
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Discussion and Possible Action:**

- Assembly Bill 450

Discussion and Possible Action:

- Assembly Bill 1861

Discussion and Possible Action:

- Senate Bill 1402

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****LEGISLATIVE COMMITTEE**

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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BILL NUMBER: AB 450 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 3, 2008

INTRODUCED BY Assembly Member ~~Strickland~~
Emmerson

FEBRUARY 20, 2007

~~An act to amend Section 2150.4 of the Fish and Game Code, relating to fish and game.~~ An act to make an appropriation in augmentation of the Budget Act of 2007, relating to the state budget, to take effect immediately as an appropriation for the usual current expenses of the state.

LEGISLATIVE COUNSEL'S DIGEST

AB 450, as amended, ~~Strickland~~ Emmerson

~~Wild animal facilities: inspection.~~
State Board of Chiropractic Examiners.

Existing law, the Chiropractic Act, enacted by initiative, provides for the licensing and regulation of chiropractors by the State Board of Chiropractic Examiners. The Budget Act of 2007 appropriated specified amounts from the State Board of Chiropractic Examiners' Fund to the board.

This bill would appropriate \$1,542,000 from the State Board of Chiropractic Examiners' Fund, in augmentation of the appropriation to the board in the Budget Act of 2007, which may be expended if specified conditions are met, and would declare the Legislature's intent that protection of the public is the highest priority of the board. This bill would declare that it is to take effect immediately as a statute providing for the usual current expenses of the state.

~~Existing law requires the Department of Fish and Game or an eligible local entity to inspect the wild animal facilities of each person holding a permit issued pursuant to existing provisions authorizing the possession of a wild animal, and requires the department, if the department elects not to inspect every wild animal facility, in cooperation with a specified committee, to develop, implement, and enter into memorandums of understanding with eligible local entities, no later than January 1, 2007.~~

~~This bill would extend this date from January 1, 2007, to January 1, 2009.~~

Vote: majority. Appropriation: ~~no~~ yes

Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares that, in order to promote consumer protection and public safety, the State Board of Chiropractic Examiners is, and has been, working cooperatively with the Department of Consumer Affairs, the California Attorney General's Office, and other applicable agencies.

(b) It is the intent of the Legislature that protection of the public shall be the highest priority for the State Board of

Chiropractic Examiners in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with the other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 2. (a) The sum of one million five hundred forty-two thousand dollars (\$1,542,000) is hereby appropriated from the revenue in the State Board of Chiropractic Examiners' Fund that consists of fees paid for the issuance and renewal of licenses, for expenditure for the 2007-08 fiscal year in augmentation of Item 8500-001-0152 of Section 2.00 of the Budget Act of 2007 for the support of the State Board of Chiropractic Examiners.

(b) Moneys appropriated in subdivision (a) may be expended only if both of the following conditions are met:

(1) The board continues the existing contract for services provided by the Department of Consumer Affairs to the State Board of Chiropractic Examiners through June 30, 2008. These services include, but are not limited to, legal counsel and personnel administration services. Legal counsel shall assist the board to create an effective investigation and enforcement program. Personnel administrative services include assisting the board to examine, recruit, and appoint investigators and inspectors employed by the board.

(2) The board utilizes legal counsel pursuant to Section 11040 of the Government Code.

SEC. 3. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the Constitution and shall go into immediate effect.

~~SECTION 1. Section 2150.4 of the Fish and Game Code is amended to read:~~

~~2150.4. (a) Consistent with Section 3005.91, the department or an eligible local entity shall inspect the wild animal facilities, as determined by the director's advisory committee, of each person holding a permit issued pursuant to Section 2150 authorizing the possession of a wild animal.~~

~~(b) In addition to the inspections specified in subdivision (a), the department or an eligible local entity, pursuant to the regulations of the commission, may inspect the facilities and care provided for the wild animal of any person holding a permit issued pursuant to Section 2150 for the purpose of determining whether the animal is being cared for in accordance with all applicable statutes and regulations. The department shall collect an inspection fee, in an amount determined by the department pursuant to Section 2150.2.~~

~~(c) No later than January 1, 2009, the department, in cooperation with the committee created pursuant to Section 2150.3, shall develop, implement, and enter into memorandums of understanding with eligible local entities if the department elects not to inspect every wild animal facility pursuant to subdivisions (a) and (b). Eligible local entities shall meet the criteria established in regulations adopted pursuant to subdivision (b) of Section 2157.~~

Bill Number: AB 450
Introduced: February 20, 2007

Author: Emmerson
Vote: Majority

Bill Summary:

This bill would add \$1,542,000 to the Board of Chiropractic Examiners (BCE) current budget, provided certain conditions are met.

Purpose of the Bill:

This bill is intended to provide the necessary funding to the BCE to promote consumer protection and public safety.

Current Budget:

The Budget Act of 2007 appropriated \$1, 500,000 to the BCE's budget.

Specifically, this bill would:

- Increase the BCE's current year budget by \$1,542,000.
- Require the BCE to continue to contract for services provided by the Department of Consumer Affairs through June 30, 2008. These services include legal counsel and personnel administrative services.
- Require the BCE to utilize legal counsel through the Attorney General Office for the representation of judicial and other proceedings (Government Code Section 11040).

Staff Recommendation:

The BCE staff recommends a support position.

BILL NUMBER: AB 1861 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Emmerson

JANUARY 31, 2008

An act to add Section 1000.5 to the Business and Professions Code, relating to chiropractors, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1861, as introduced, Emmerson. State Board of Chiropractic Examiners.

Existing law, the Chiropractic Act, enacted by initiative, provides for the licensing and regulation of chiropractors by the State Board of Chiropractic Examiners.

This bill would appropriate \$539,000 from the State Board of Chiropractic Examiners' Fund for purposes of the Chiropractic Act, as specified, and would declare the Legislature's intent that protection of the public is the highest priority of the board.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares that, in order to promote consumer protection and public safety, the State Board of Chiropractic Examiners is and has been working cooperatively with the Department of Consumer Affairs, the California Attorney General's Office, and other applicable agencies.

SEC. 2. Section 1000.5 is added to the Business and Professions Code, to read:

1000.5. It is the intent of the Legislature that protection of the public shall be the highest priority for the State Board of Chiropractic Examiners in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with the other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 3. In addition to the appropriation made by Item 8500-001-0152 of Section 2.00 of the Budget Act of 2007, the sum of five hundred thirty-nine thousand dollars (\$539,000) is hereby appropriated from the revenue in the State Board of Chiropractic Examiners Fund that consists of fees paid for the issuance and renewal of licenses, for the support of the State Board of Chiropractic Examiners.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that necessary funds for the regulation of chiropractors are transferred to the State Board of Chiropractic Examiners in a timely manner, it is necessary that this act take

effect immediately.

Bill Number: AB 1861
Introduced: January 31, 2008

Author: Emmerson
Vote: 2/3

Bill Summary:

This bill would add \$1,500,000 to the Board of Chiropractic Examiners (BCE) current budget.

Purpose of the Bill:

This bill is intended to provide the necessary funding to the BCE to promote consumer protection and public safety.

Current Budget:

The Budget Act of 2007 appropriated \$1, 500,000 to the BCE's budget.

Staff Recommendation:

The BCE staff recommends a support position.

BILL NUMBER: SB 1402 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Corbett

FEBRUARY 21, 2008

An act to amend Sections 27, 801, 802.1, and 1005 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as introduced, Corbett. Reporting requirements.

Existing law, the Chiropractic Act, a statute enacted by initiative, creates the State Board of Chiropractic Examiners, which licenses and regulates the practice of chiropractic. Existing law requires certain entities within the Department of Consumer Affairs and the Department of Real Estate to provide information, excluding personal information, on the Internet relative to the status of every license issued by the entity, as specified. Existing law requires certain health care providers to report to their licensing boards the bringing of an indictment or information charging a felony against them or their conviction of a felony or misdemeanor. Existing law requires insurers providing professional liability insurance to certain health care professionals to send a complete report to the applicable licensing entity as to any settlement or arbitration award meeting certain criteria.

This bill would expand the information that the specified licensing entities are required to disclose to the public on the Internet information to include information regarding licensees convictions of a misdemeanor or felony, and would add the Board of Chiropractic Examiners to the entities required to provide the licensing status information. The bill would require a chiropractor to report to the Board of Chiropractic Examiners the bringing of an indictment or information charging a felony against them or their conviction of any felony or misdemeanor. The bill would also require an insurer providing professional liability insurance to a chiropractor to send a complete report to the Chiropractic Examiners Board, as specified, of any settlement or arbitration award of over \$2,000 of a claim or action for damages meeting certain criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b) ~~on or after July 1, 2001,~~ shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on conviction s

of licensee s of the entity of a misdemeanor or felony, and shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of ~~their~~ its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery ~~Program~~ and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The ~~Funeral Directors and Embalmers Program~~ Cemetery and funeral Bureau shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related

to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(13) The Board of Chiropractic Examiners shall disclose information on its licensees.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 801 of the Business and Professions Code is amended to read:

801. (a) Except as provided in Section 801.01 and subdivisions (b), (c), ~~and~~ (d), and (e) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a chiropractor licensed pursuant to the Chiropractic Act shall send a complete

report to the Board of Chiropractic Examiners of any settlement or arbitration award over two thousand dollars (\$2,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

~~—(e)—~~

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by ~~subdivision (a), (b), or (c)~~ this section has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

~~—(f)—~~

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. ~~This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.~~

SEC. 3. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A physician and surgeon, an osteopathic physician and surgeon, ~~and~~ a doctor of podiatric medicine, and a chiropractor shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

SEC. 4. Section 1005 of the Business and Professions Code is amended to read:

1005. The provisions of Sections 12.5, 23.9, 27, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 730.5, 731, 801, 802.1, and 851 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

Bill Number: SB 1402
Introduced: February 21, 2008

Author: Corbett
Vote: Majority

Bill Summary:

This bill would require the Board of Chiropractic Examiners (BCE) to disclose, via the Internet, licensing status information and conviction of a misdemeanor or felony. The bill would require a chiropractor to report to the BCE the bringing of an indictment or information of charges or convictions of any misdemeanor or felony against them. In addition, the bill would require an insurer providing professional liability insurance to a chiropractor to report to the BCE of any settlement or arbitration award of over \$2,000 for certain damages.

Purpose of the Bill:

According to the Author, this bill is intended to increase consumer protection and provide the BCE with information in a timely manner to take appropriate action, if warranted.

Existing Law:

Certain entities within the Department of Consumer Affairs and the Department of Real Estate are required to provide information, excluding personal information, on the Internet relative to the status of every license issued. Insurers providing professional liability insurance to health care professionals are required to send reports to the appropriate licensing agency regarding any settlement or arbitration awards of \$3,000. Certain health care providers are required to report to the appropriate licensing agency the bringing of an indictment and/or information charging or conviction of a felony or misdemeanor against a licensee.

Specifically, this bill would:

- Add the BCE to the entities required to provide licensing status information.
- In addition to the licensing status information, the BCE would be required to provide, via the Internet, information on convictions of a misdemeanor or felony against a licensee.
- Require insurers providing liability insurance to report to the BCE any settlement or arbitration award over \$2,000 of a claim or action for damages for death or injury caused by the licensees' negligence, error, or omission in practice, or rendering of unauthorized professional services.

- Require a chiropractor to report to the BCE a bringing of an indictment, charging of a felony, or misdemeanor against the licensee, within 30 days from the date of an indictment or information of the charges. A licensee that fails to comply with the reporting requirement is subject to a fine not to exceed \$5,000.

Fiscal Impact:

The BCE currently provides licensing status information, suspensions, revocations, and other related enforcement actions, via the Internet. To provide information pertaining to misdemeanor or felony convictions would require additional programming, which would result in additional cost to the BCE in the amount of \$5,000. In addition, the BCE will experience an increase in workload associated with the review and, possible investigation of the settlement or arbitration reports received from insurance providers. However, the BCE staff believes this would not significantly increase workload, and should be able to be absorbed with existing staff.

Staff Recommendation:

The BCE staff recommends a watch position.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****LEGISLATIVE COMMITTEE****May 22, 2008****9:30 a.m.**

Hearing Room

1625 N. Market Blvd, Room S102
Sacramento, CA 95834

AGENDA**CALL TO ORDER****Approval of Minutes**

- March 27, 2008

Discussion and Possible Action:

- Senate Bill 1402
- Any other legislative bills of interest to the Board.

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****LEGISLATIVE COMMITTEE**

Frederick Lerner, D.C. Chair
Francesco Columbu, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to persons with physical disabilities. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**NOTICE OF PUBLIC MEETING****LEGISLATIVE COMMITTEE****May 22, 2008****9:30 a.m.****Hearing Room****1625 N. Market Blvd, Room S102
Sacramento, CA 95834****AGENDA****CALL TO ORDER****Approval of Minutes**

- March 27, 2008

Discussion and Possible Action:

- Senate Bill 1402
- Any other legislative bills of interest to the Board.

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****LEGISLATIVE COMMITTEE**

Frederick Lerner, D.C. Chair
Francesco Columbu, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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BOARD OF CHIROPRACTIC EXAMINERS MEETING MINUTES Legislative Committee March 27, 2008 400 R Street, Room 101 Sacramento, CA 95814

Committee Members Present

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 8:35 a.m.

Roll Call

Dr. Lerner called the roll. All committee members were present.

Assembly Bill 450 (Emmerson)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A SUPPORT POSITION ON AB 450.

MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION

VOTE: 2-0

MOTION CARRIED

Assembly Bill 1861 (Emmerson)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A SUPPORT POSITION ON AB 1861.

MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION

VOTE: 2-0

MOTION CARRIED

Senate Bill 1402 (Corbett)

MOTION: DR. LERNER MOVED THAT THE BOARD TAKE A WATCH POSITION ON THE BILL AND SUBMIT A LETTER TO THE AUTHOR'S OFFICE REQUESTING LANGUAGE THAT WOULD ASSIST THE BOARD RECEIVE RELEVANT INFORMATION FROM LIABILITY INSURANCE COMPANIES

MOTION SECONDED: DR. LUBKIN SECONDED THE MOTION

MOTION CARRIED

PUBLIC COMMENT:

Dr. Charles Davis, ICAC, spoke in support of AB 450 and expressed concerns about SB 1402 regarding the settlement amounts for chiropractors.

FUTURE AGENDA ITEMS

Mr. Stiger committed to providing a more comprehensive review and analysis of all relevant bills affecting the profession once resources are restored.

Ms. Powell recommended that the associations invite associations to come before the Board in early in August or September to present their legislative proposals for the coming year.

ADJOURNMENT:

Dr. Lubkin adjourned the meeting at approximately 9:00 a.m.

Bill Number: SB 1402
Introduced: February 21, 2008
Last Amended: April 10, 2008

Author: Corbett
Vote: Majority

Bill Summary:

This bill would require the Board of Chiropractic Examiners (BCE) to disclose, via the Internet, licensing status information, suspensions, and revocations. The bill would require a chiropractor to report to the BCE the bringing of an indictment or information of charges or convictions of any misdemeanor or felony against them. In addition, the bill would require an insurer providing professional liability insurance to a chiropractor to report to the BCE of any settlement or arbitration award of over \$2,000 for certain damages.

Purpose of the Bill:

According to the Author, this bill is intended to increase consumer protection and provide the BCE with information in a timely manner to take appropriate action, if warranted.

Existing Law:

Certain entities within the Department of Consumer Affairs and the Department of Real Estate are required to provide information, excluding personal information, on the Internet relative to the status of every license issued. Insurers providing professional liability insurance to health care professionals are required to send reports to the appropriate licensing agency regarding any settlement or arbitration awards of \$3,000. Certain health care providers are required to report to the appropriate licensing agency the bringing of an indictment and/or information charging or conviction of a felony or misdemeanor against a licensee.

Specifically, this bill would:

- Add the BCE to the entities required to provide licensing status information.
- Require insurers providing liability insurance to report to the BCE any settlement or arbitration award over \$2,000 of a claim or action for damages for death or injury caused by the licensees' negligence, error, or omission in practice, or rendering of unauthorized professional services.
- Require a chiropractor to report to the BCE a bringing of an indictment, charging of a felony, or misdemeanor against the licensee, within 30 days from the date of an indictment or information of the charges. A licensee

that fails to comply with the reporting requirement is subject to a fine not to exceed \$5,000.

Fiscal Impact:

The BCE currently provides licensing status information, suspensions, revocations, and other related enforcement actions, via the Internet. The BCE will experience an increase in workload associated with the review and, possible investigation of the settlement or arbitration reports received from insurance providers. However, the BCE staff believes this would not significantly increase workload, and should be able to be absorbed with existing staff.

AMENDED IN SENATE APRIL 10, 2008

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1402

Introduced by Senator Corbett

February 21, 2008

An act to amend Sections 27, 801, 802.1, and 1005 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, Corbett. Reporting requirements.

Existing law provides for the licensure, registration, and regulation of healing arts practitioners by various boards and bureaus, including, but not limited to, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the Veterinary Medical Board, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology Board, the Respiratory Care Board of California, the California Board of Occupational Therapy, and the Bureau of Naturopathic Medicine. Existing law, the Chiropractic Act, a statute enacted by initiative, creates the State Board of Chiropractic Examiners, which licenses and regulates the practice of chiropractic. Existing law requires certain entities within the Department of Consumer Affairs and the Department of Real Estate to provide information, excluding personal information, on the Internet relative to the status of every license issued by the entity, as specified. Existing law requires certain health care providers to report to their licensing boards the bringing of an indictment or information charging a felony against ~~them or their~~ *him or her or his or her* conviction of a felony or misdemeanor. Existing law requires insurers providing professional

liability insurance to certain health care professionals to send a complete report to the applicable licensing entity as to any settlement or arbitration award meeting certain criteria.

This bill would ~~expand the information that the specified licensing entities are required to disclose to the public on the Internet to include information regarding licensee's convictions of specified misdemeanors or felonies, and~~ would add the Board of Chiropractic Examiners and specified other healing arts boards and bureaus to the entities required to provide the licensing status information. The bill would require a chiropractor to report to the Board of Chiropractic Examiners the bringing of an indictment or information charging a felony against them or their conviction of any felony or misdemeanor. The bill would also require an insurer providing professional liability insurance to a chiropractor to send a complete report to the Chiropractic Examiners Board, as specified, of any settlement or arbitration award of over \$2,000 of a claim or action for damages meeting certain criteria.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27 of the Business and Professions Code
2 is amended to read:

3 27. (a) Every entity specified in subdivision (b) shall provide
4 on the Internet information regarding the status of every license
5 issued by that entity in accordance with the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code) and the Information
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public
10 information to be provided on the Internet shall include information
11 ~~on a misdemeanor conviction that results in a disciplinary action~~
12 ~~or an accusation that is not subsequently withdrawn or dismissed,~~
13 ~~or a felony conviction that is reported to the entity by the courts~~
14 ~~pursuant to Section 803, unless otherwise provided by law, and~~
15 ~~shall include information on suspensions and revocations of~~
16 licenses issued by the entity and other related enforcement action
17 taken by the entity relative to persons, businesses, or facilities
18 subject to licensure or regulation by the entity. In providing
19 information on the Internet, each entity shall comply with the

1 Department of Consumer Affairs Guidelines for Access to Public
2 Records. The information may not include personal information,
3 including home telephone number, date of birth, or social security
4 number. Each entity shall disclose a licensee's address of record.
5 However, each entity shall allow a licensee to provide a post office
6 box number or other alternate address, instead of his or her home
7 address, as the address of record. This section shall not preclude
8 an entity from also requiring a licensee, who has provided a post
9 office box number or other alternative mailing address as his or
10 her address of record, to provide a physical business address or
11 residence address only for the entity's internal administrative use
12 and not for disclosure as the licensee's address of record or
13 disclosure on the Internet.

14 (b) Each of the following entities within the Department of
15 Consumer Affairs shall comply with the requirements of this
16 section:

17 (1) The Acupuncture Board shall disclose information on its
18 licensees.

19 (2) The Board of Behavioral Sciences shall disclose information
20 on its licensees, including marriage and family therapists, licensed
21 clinical social workers, and licensed educational psychologists.

22 (3) The Dental Board of California shall disclose information
23 on its licensees.

24 (4) The State Board of Optometry shall disclose information
25 regarding certificates of registration to practice optometry,
26 statements of licensure, optometric corporation registrations, branch
27 office licenses, and fictitious name permits of its licensees.

28 (5) The Board for Professional Engineers and Land Surveyors
29 shall disclose information on its registrants and licensees.

30 (6) The Structural Pest Control Board shall disclose information
31 on its licensees, including applicators, field representatives, and
32 operators in the areas of fumigation, general pest and wood
33 destroying pests and organisms, and wood roof cleaning and
34 treatment.

35 (7) The Bureau of Automotive Repair shall disclose information
36 on its licensees, including auto repair dealers, smog stations, lamp
37 and brake stations, smog check technicians, and smog inspection
38 certification stations.

39 (8) The Bureau of Electronic and Appliance Repair shall disclose
40 information on its licensees, including major appliance repair

1 dealers, combination dealers (electronic and appliance), electronic
2 repair dealers, service contract sellers, and service contract
3 administrators.

4 (9) The Cemetery and Funeral Bureau shall disclose information
5 on its licensees, including cemetery brokers, cemetery salespersons,
6 crematories, and cremated remains disposers.

7 (10) The Cemetery and Funeral Bureau shall disclose
8 information on its licensees, including embalmers, funeral
9 establishments, and funeral directors.

10 (11) The Contractors' State License Board shall disclose
11 information on its licensees in accordance with Chapter 9
12 (commencing with Section 7000) of Division 3. In addition to
13 information related to licenses as specified in subdivision (a), the
14 board shall also disclose information provided to the board by the
15 Labor Commissioner pursuant to Section 98.9 of the Labor Code.

16 (12) The Board of Psychology shall disclose information on its
17 licensees, including psychologists, psychological assistants, and
18 registered psychologists.

19 (13) The Board of Chiropractic Examiners shall disclose
20 information on its licensees.

21 (14) The Board of Registered Nursing shall disclose information
22 on its licensees.

23 (15) The Board of Vocational Nursing and Psychiatric
24 Technicians of the State of California shall disclose information
25 on its licensees.

26 (16) The Veterinary Medical Board shall disclose information
27 on its licensees and registrants.

28 (17) The Physical Therapy Board of California shall disclose
29 information on its licensees.

30 (18) The California State Board of Pharmacy shall disclose
31 information on its licensees.

32 (19) The Speech-Language Pathology and Audiology Board
33 shall disclose information on its licensees.

34 (20) The Respiratory Care Board of California shall disclose
35 information on its licensees.

36 (21) The California Board of Occupational Therapy shall
37 disclose information on its licensees.

38 (22) The Bureau of Naturopathic Medicine shall disclose
39 information on its licensees.

1 (c) "Internet" for the purposes of this section has the meaning
2 set forth in paragraph (6) of subdivision (e) of Section 17538.

3 SEC. 2. Section 801 of the Business and Professions Code is
4 amended to read:

5 801. (a) Except as provided in Section 801.01 and subdivisions
6 (b), (c), (d), and (e) of this section, every insurer providing
7 professional liability insurance to a person who holds a license,
8 certificate, or similar authority from or under any agency mentioned
9 in subdivision (a) of Section 800 shall send a complete report to
10 that agency as to any settlement or arbitration award over three
11 thousand dollars (\$3,000) of a claim or action for damages for
12 death or personal injury caused by that person's negligence, error,
13 or omission in practice, or by his or her rendering of unauthorized
14 professional services. The report shall be sent within 30 days after
15 the written settlement agreement has been reduced to writing and
16 signed by all parties thereto or within 30 days after service of the
17 arbitration award on the parties.

18 (b) Every insurer providing professional liability insurance to
19 a person licensed pursuant to Chapter 13 (commencing with
20 Section 4980) or Chapter 14 (commencing with Section 4990)
21 shall send a complete report to the Board of Behavioral Science
22 Examiners as to any settlement or arbitration award over ten
23 thousand dollars (\$10,000) of a claim or action for damages for
24 death or personal injury caused by that person's negligence, error,
25 or omission in practice, or by his or her rendering of unauthorized
26 professional services. The report shall be sent within 30 days after
27 the written settlement agreement has been reduced to writing and
28 signed by all parties thereto or within 30 days after service of the
29 arbitration award on the parties.

30 (c) Every insurer providing professional liability insurance to
31 a dentist licensed pursuant to Chapter 4 (commencing with Section
32 1600) shall send a complete report to the Dental Board of
33 California as to any settlement or arbitration award over ten
34 thousand dollars (\$10,000) of a claim or action for damages for
35 death or personal injury caused by that person's negligence, error,
36 or omission in practice, or rendering of unauthorized professional
37 services. The report shall be sent within 30 days after the written
38 settlement agreement has been reduced to writing and signed by
39 all parties thereto or within 30 days after service of the arbitration
40 award on the parties.

1 (d) Every insurer providing liability insurance to a veterinarian
2 licensed pursuant to Chapter 11 (commencing with Section 4800)
3 shall send a complete report to the Veterinary Medical Board of
4 any settlement or arbitration award over ten thousand dollars
5 (\$10,000) of a claim or action for damages for death or injury
6 caused by that person's negligence, error, or omission in practice,
7 or rendering of unauthorized professional service. The report shall
8 be sent within 30 days after the written settlement agreement has
9 been reduced to writing and signed by all parties thereto or within
10 30 days after service of the arbitration award on the parties.

11 (e) Every insurer providing liability insurance to a chiropractor
12 licensed pursuant to the Chiropractic Act shall send a complete
13 report to the Board of Chiropractic Examiners of any settlement
14 or arbitration award over two thousand dollars (\$2,000) of a claim
15 or action for damages for death or injury caused by that person's
16 negligence, error, or omission in practice, or rendering of
17 unauthorized professional service. The report shall be sent within
18 30 days after the written settlement agreement has been reduced
19 to writing and signed by all parties thereto or within 30 days after
20 service of the arbitration award on the parties.

21 (f) The insurer shall notify the claimant, or if the claimant is
22 represented by counsel, the insurer shall notify the claimant's
23 attorney, that the report required by this section has been sent to
24 the agency. If the attorney has not received this notice within 45
25 days after the settlement was reduced to writing and signed by all
26 of the parties, the arbitration award was served on the parties, or
27 the date of entry of the civil judgment, the attorney shall make the
28 report to the agency.

29 (g) Notwithstanding any other provision of law, no insurer shall
30 enter into a settlement without the written consent of the insured,
31 except that this prohibition shall not void any settlement entered
32 into without that written consent. The requirement of written
33 consent shall only be waived by both the insured and the insurer.

34 SEC. 3. Section 802.1 of the Business and Professions Code
35 is amended to read:

36 802.1. (a) (1) A physician and surgeon, an osteopathic
37 physician and surgeon, a doctor of podiatric medicine, and a
38 chiropractor shall report either of the following to the entity that
39 issued his or her license:

1 (A) The bringing of an indictment or information charging a
2 felony against the licensee.

3 (B) The conviction of the licensee, including any verdict of
4 guilty, or plea of guilty or no contest, of any felony or
5 misdemeanor.

6 (2) The report required by this subdivision shall be made in
7 writing within 30 days of the date of the bringing of the indictment
8 or information or of the conviction.

9 (b) Failure to make a report required by this section shall be a
10 public offense punishable by a fine not to exceed five thousand
11 dollars (\$5,000).

12 SEC. 4. Section 1005 of the Business and Professions Code is
13 amended to read:

14 1005. The provisions of Sections 12.5, 23.9, 27, 29.5, 30, 31,
15 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141,
16 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5,
17 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704,
18 710, 716, 730.5, 731, 801, 802.1, and 851 are applicable to persons
19 licensed by the State Board of Chiropractic Examiners under the
20 Chiropractic Act.

Bill Number: AB 2969
Introduced: February 22, 2008

Author: Lieber
Vote: Majority

Bill Summary:

This bill would require all physicians including chiropractors performing workers' compensation utilization review to be licensed in California.

Purpose of the Bill:

The bill is intended to ensure that there is a regulatory oversight body that can discipline a utilization physician in the event the physician violates practice standards.

Existing Law:

Establishes a comprehensive system of workers' compensation benefits for workers injured on the job, including medical benefits; authorizes employers or insurers to conduct "utilization review" of proposed medical treatment in order to determine the appropriateness of that treatment and its compliance with the applicable guidelines; provides that no other person other than a licensed physician may modify, delay, or deny requests for authorization of medical treatment. By regulation, this has been interpreted to mean a physician licensed in any state.

Specifically, this bill would:

Require any licensed physician who is conducting a utilization review evaluation to be licensed in California.

Fiscal Impact:

There is no fiscal impact associated with this bill.

ASSEMBLY BILL

No. 2969

**Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Beall and Ruskin)**

February 22, 2008

An act to amend Section 4610 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2969, as introduced, Lieber. Workers' compensation: medical treatment utilization reviews.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment, and requires an employer to pay for all reasonable costs of medical services necessary to care for or relieve work-related injuries. Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require that any licensed physician who is conducting such an evaluation be licensed in California.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4610 of the Labor Code is amended to
2 read:

3 4610. (a) For purposes of this section, "utilization review"
4 means utilization review or utilization management functions that
5 prospectively, retrospectively, or concurrently review and approve,
6 modify, delay, or deny, based in whole or in part on medical
7 necessity to cure and relieve, treatment recommendations by
8 physicians, as defined in Section 3209.3, prior to, retrospectively,
9 or concurrent with the provision of medical treatment services
10 pursuant to Section 4600.

11 (b) Every employer shall establish a utilization review process
12 in compliance with this section, either directly or through its insurer
13 or an entity with which an employer or insurer contracts for these
14 services.

15 (c) Each utilization review process shall be governed by written
16 policies and procedures. These policies and procedures shall ensure
17 that decisions based on the medical necessity to cure and relieve
18 of proposed medical treatment services are consistent with the
19 schedule for medical treatment utilization adopted pursuant to
20 Section 5307.27. Prior to adoption of the schedule, these policies
21 and procedures shall be consistent with the recommended standards
22 set forth in the American College of Occupational and
23 Environmental Medicine Occupational Medical Practice
24 Guidelines. These policies and procedures, and a description of
25 the utilization process, shall be filed with the administrative director
26 and shall be disclosed by the employer to employees, physicians,
27 and the public upon request.

28 (d) If an employer, insurer, or other entity subject to this section
29 requests medical information from a physician in order to
30 determine whether to approve, modify, delay, or deny requests for
31 authorization, the employer shall request only the information
32 reasonably necessary to make the determination. The employer,
33 insurer, or other entity shall employ or designate a medical director
34 who holds an unrestricted license to practice medicine in this state
35 issued pursuant to Section 2050 or Section 2450 of the Business
36 and Professions Code. The medical director shall ensure that the
37 process by which the employer or other entity reviews and
38 approves, modifies, delays, or denies requests by physicians prior

1 to, retrospectively, or concurrent with the provision of medical
2 treatment services, complies with the requirements of this section.
3 Nothing in this section shall be construed as restricting the existing
4 authority of the Medical Board of California.

5 (e) No person other than a ~~licensed~~ physician *licensed in*
6 *California* who is competent to evaluate the specific clinical issues
7 involved in the medical treatment services, and where these
8 services are within the scope of the physician's practice, requested
9 by the physician may modify, delay, or deny requests for
10 authorization of medical treatment for reasons of medical necessity
11 to cure and relieve.

12 (f) The criteria or guidelines used in the utilization review
13 process to determine whether to approve, modify, delay, or deny
14 medical treatment services shall be all of the following:

15 (1) Developed with involvement from actively practicing
16 physicians.

17 (2) Consistent with the schedule for medical treatment utilization
18 adopted pursuant to Section 5307.27. Prior to adoption of the
19 schedule, these policies and procedures shall be consistent with
20 the recommended standards set forth in the American College of
21 Occupational and Environmental Medicine Occupational Medical
22 Practice Guidelines.

23 (3) Evaluated at least annually, and updated if necessary.

24 (4) Disclosed to the physician and the employee, if used as the
25 basis of a decision to modify, delay, or deny services in a specified
26 case under review.

27 (5) Available to the public upon request. An employer shall
28 only be required to disclose the criteria or guidelines for the
29 specific procedures or conditions requested. An employer may
30 charge members of the public reasonable copying and postage
31 expenses related to disclosing criteria or guidelines pursuant to
32 this paragraph. Criteria or guidelines may also be made available
33 through electronic means. No charge shall be required for an
34 employee whose physician's request for medical treatment services
35 is under review.

36 (g) In determining whether to approve, modify, delay, or deny
37 requests by physicians prior to, retrospectively, or concurrent with
38 the provisions of medical treatment services to employees all of
39 the following requirements must be met:

1 (1) Prospective or concurrent decisions shall be made in a timely
2 fashion that is appropriate for the nature of the employee's
3 condition, not to exceed five working days from the receipt of the
4 information reasonably necessary to make the determination, but
5 in no event more than 14 days from the date of the medical
6 treatment recommendation by the physician. In cases where the
7 review is retrospective, the decision shall be communicated to the
8 individual who received services, or to the individual's designee,
9 within 30 days of receipt of information that is reasonably
10 necessary to make this determination.

11 (2) When the employee's condition is such that the employee
12 faces an imminent and serious threat to his or her health, including,
13 but not limited to, the potential loss of life, limb, or other major
14 bodily function, or the normal timeframe for the decisionmaking
15 process, as described in paragraph (1), would be detrimental to the
16 employee's life or health or could jeopardize the employee's ability
17 to regain maximum function, decisions to approve, modify, delay,
18 or deny requests by physicians prior to, or concurrent with, the
19 provision of medical treatment services to employees shall be made
20 in a timely fashion that is appropriate for the nature of the
21 employee's condition, but not to exceed 72 hours after the receipt
22 of the information reasonably necessary to make the determination.

23 (3) (A) Decisions to approve, modify, delay, or deny requests
24 by physicians for authorization prior to, or concurrent with, the
25 provision of medical treatment services to employees shall be
26 communicated to the requesting physician within 24 hours of the
27 decision. Decisions resulting in modification, delay, or denial of
28 all or part of the requested health care service shall be
29 communicated to physicians initially by telephone or facsimile,
30 and to the physician and employee in writing within 24 hours for
31 concurrent review, or within two business days of the decision for
32 prospective review, as prescribed by the administrative director.
33 If the request is not approved in full, disputes shall be resolved in
34 accordance with Section 4062. If a request to perform spinal
35 surgery is denied, disputes shall be resolved in accordance with
36 subdivision (b) of Section 4062.

37 (B) In the case of concurrent review, medical care shall not be
38 discontinued until the employee's physician has been notified of
39 the decision and a care plan has been agreed upon by the physician
40 that is appropriate for the medical needs of the employee. Medical

1 care provided during a concurrent review shall be care that is
2 medically necessary to cure and relieve, and an insurer or
3 self-insured employer shall only be liable for those services
4 determined medically necessary to cure and relieve. If the insurer
5 or self-insured employer disputes whether or not one or more
6 services offered concurrently with a utilization review were
7 medically necessary to cure and relieve, the dispute shall be
8 resolved pursuant to Section 4062, except in cases involving
9 recommendations for the performance of spinal surgery, which
10 shall be governed by the provisions of subdivision (b) of Section
11 4062. Any compromise between the parties that an insurer or
12 self-insured employer believes may result in payment for services
13 that were not medically necessary to cure and relieve shall be
14 reported by the insurer or the self-insured employer to the licensing
15 board of the provider or providers who received the payments, in
16 a manner set forth by the respective board and in such a way as to
17 minimize reporting costs both to the board and to the insurer or
18 self-insured employer, for evaluation as to possible violations of
19 the statutes governing appropriate professional practices. No fees
20 shall be levied upon insurers or self-insured employers making
21 reports required by this section.

22 (4) Communications regarding decisions to approve requests
23 by physicians shall specify the specific medical treatment service
24 approved. Responses regarding decisions to modify, delay, or deny
25 medical treatment services requested by physicians shall include
26 a clear and concise explanation of the reasons for the employer's
27 decision, a description of the criteria or guidelines used, and the
28 clinical reasons for the decisions regarding medical necessity.

29 (5) If the employer, insurer, or other entity cannot make a
30 decision within the timeframes specified in paragraph (1) or (2)
31 because the employer or other entity is not in receipt of all of the
32 information reasonably necessary and requested, because the
33 employer requires consultation by an expert reviewer, or because
34 the employer has asked that an additional examination or test be
35 performed upon the employee that is reasonable and consistent
36 with good medical practice, the employer shall immediately notify
37 the physician and the employee, in writing, that the employer
38 cannot make a decision within the required timeframe, and specify
39 the information requested but not received, the expert reviewer to
40 be consulted, or the additional examinations or tests required. The

1 employer shall also notify the physician and employee of the
2 anticipated date on which a decision may be rendered. Upon receipt
3 of all information reasonably necessary and requested by the
4 employer, the employer shall approve, modify, or deny the request
5 for authorization within the timeframes specified in paragraph (1)
6 or (2).

7 (h) Every employer, insurer, or other entity subject to this section
8 shall maintain telephone access for physicians to request
9 authorization for health care services.

10 (i) If the administrative director determines that the employer,
11 insurer, or other entity subject to this section has failed to meet
12 any of the timeframes in this section, or has failed to meet any
13 other requirement of this section, the administrative director may
14 assess, by order, administrative penalties for each failure. A
15 proceeding for the issuance of an order assessing administrative
16 penalties shall be subject to appropriate notice to, and an
17 opportunity for a hearing with regard to, the person affected. The
18 administrative penalties shall not be deemed to be an exclusive
19 remedy for the administrative director. These penalties shall be
20 deposited in the Workers' Compensation Administration Revolving
21 Fund.

Bill Number: SB 1441
Introduced: February 21, 2008
Last Amended: May 7, 2008

Author: Ridley-Thomas
Vote: Majority

Bill Summary:

This bill establishes within the Department of Consumer Affairs (DCA) the Diversion Coordination Committee (DCC) and the Licensee Drug and Alcohol Addiction Coordination Committee (LDAACC) to establish guidelines and recommendations relating to healing arts licensees with alcohol and drug problems. The Committees would be required to meet periodically and issue a set of best practices and recommendations to govern healing arts licensing boards' diversion programs or diversion evaluation committees, effective January 1, 2010.

Purpose of the Bill:

According to the author's office, this bill is necessary to ensure that public safety remains the paramount mission of healing arts licensing boards when dealing with licensees who are suffering from drug or alcohol abuse or dependency problems.

Existing Law:

Requires various healing arts licensing boards within the DCA to establish and administer diversion programs or diversions evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol.

Specifically, this bill would:

- Establishes within the DCA the DCC and LDAACC to establish best practices and recommendations to govern those healing arts licensing boards' diversion programs or diversion evaluation committees effective January 1, 2010.
- The committees will be comprised of the executive officers of the various healing arts licensing boards, and the DCA shall act as the chair of the committee.
- The committees shall provide best practices, change in law, as necessary, and recommendations addressing; when a licensee is to be irrevocably terminated from the programs and referred for disciplinary action; audits of the programs; if a licensee shall continue to practice while in the programs; how to ensure drug tests are random, accurate, and reliable;

criteria for the programs; criteria for probation requirements; and criteria for restoration of a license.

Fiscal Impact:

AMENDED IN SENATE MAY 7, 2008
AMENDED IN SENATE APRIL 7, 2008

SENATE BILL

No. 1441

Introduced by Senator Ridley-Thomas

February 21, 2008

An act to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. Healing arts practitioners: alcohol and drug abuse.

Existing law requires various healing arts licensing boards to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol.

This bill would establish in the Department of Consumer Affairs the Diversion Coordination Committee, which would be comprised of the executive officers of those healing arts *licensing* boards, as specified, that establish and maintain a diversion program or diversion evaluation committee, and would establish in the department the Licensee Drug and Alcohol Addiction Coordination Committee, which would be comprised of the executive officers of all other healing arts *licensing* boards. The bill would require these committees to meet periodically at the discretion of the department and to each issue, ~~by an unspecified date no later than January 1, 2010~~, a set of best practices and recommendations, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature that the Bureau~~
2 ~~of State Audits conduct a thorough performance audit of the~~
3 ~~diversion programs created pursuant to this act in order to evaluate~~
4 ~~the effectiveness and efficiency of the programs and the providers~~
5 ~~chosen by the Department of Consumer Affairs to manage the~~
6 ~~programs; and to make recommendations regarding the~~
7 ~~continuation of the programs and any changes or reforms required~~
8 ~~to ensure that individuals participating in the programs are~~
9 ~~appropriately monitored; and the public is protected from health~~
10 ~~practitioners who are impaired due to alcohol or drug abuse or~~
11 ~~mental or physical illness. The department and its staff shall~~
12 ~~cooperate with the audit, and shall provide data, information, and~~
13 ~~case files as requested by the auditor to perform all of his or her~~
14 ~~duties. The provision of confidential data, information, and case~~
15 ~~files from health care-related boards to the auditor shall not~~
16 ~~constitute a waiver of any exemption from disclosure or discovery~~
17 ~~or of any confidentiality protection or privilege otherwise provided~~
18 ~~by law that is applicable to the data, information, or case files.~~

19 ~~SEC. 2.~~

20 ~~SECTION 1.~~ Article 3.6 (commencing with Section 315) is
21 added to Chapter 4 of Division 1 of the Business and Professions
22 Code, to read:

23
24 Article 3.6 Healing Arts Licensee Addiction and Diversion

25
26 315. (a) There is established in the Department of Consumer
27 Affairs the Diversion Coordination Committee. The committee
28 shall be comprised of the executive officers of those healing arts
29 licensing boards within the department that establish and maintain
30 diversion programs or diversion evaluation committees. The
31 Director of Consumer Affairs shall act as the chair of the
32 committee.

33 (b) The committee shall meet periodically at the discretion of
34 the director and shall, no later than January 1, 2010, issue a
35 set of best practices and recommendations to govern those healing
36 arts licensing boards' diversion programs or diversion evaluation
37 committees. These recommendations shall propose best practices,
38 regulations, or changes in law, as are necessary, and shall include,

1 but shall not be limited to, recommendations addressing all of the
2 following issues:

3 (1) When a licensee is to be irrevocably terminated from the
4 diversion program and referred for disciplinary action.

5 (2) Periodic audits of the program.

6 (3) Whether a licensee enrolled in the program who may pose
7 a risk to patients may continue to practice while in the program
8 without the knowledge or consent of patients.

9 (4) How best to ensure that drug tests are random, accurate, and
10 reliable, and that results for those tests are obtained quickly.

11 (5) Whether there should be criteria for entry into the program,
12 such as criteria that differentiate between licensees who the board
13 has reason to believe pose a risk to patients and those where the
14 risk is speculative.

15 316. (a) There is established in the Department of Consumer
16 Affairs the Licensee Drug and Alcohol Addiction Coordination
17 Committee. The committee shall be comprised of the executive
18 officers of the healing arts licensing boards within the department
19 that do not establish and maintain diversion programs or diversion
20 evaluation committees. The Director of Consumer Affairs shall
21 act as the chair of the committee.

22 (b) The committee shall meet periodically at the discretion of
23 the department and shall, no later than—*January 1, 2010*, issue
24 a set of best practices and recommendations to govern those healing
25 arts licensing boards' disciplinary programs as they relate to
26 disciplinary matters relating to drug or alcohol addiction. These
27 recommendations shall propose best practices, regulations, or
28 changes in law, as are necessary, and shall include, but shall not
29 be limited to, recommendations addressing all of the following
30 issues, related to drug or alcohol abuse:

31 (1) Criteria for placing a licensee on probation and related
32 criteria for reporting and monitoring the probation.

33 (2) Criteria for refusing a request for probation.

34 (3) Criteria for imposition of discipline and the level of
35 discipline.

36 (4) Criteria for restoration of a license.

37 317. For purposes of this article, "healing arts licensing board"
38 means any board established pursuant to Division 2 (commencing

- 1 with Section 500), the State Board of Chiropractic Examiners, or
- 2 the Osteopathic Medical Board of California.

O

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Manipulation Under Anesthesia (MUA) Committee** of the **Board of Chiropractic Examiners** will be held as follows:

January 10, 2008

Upon Conclusion of the Enforcement Committee Meeting
which is scheduled to start at 9:00 a.m.

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Approval of Minutes

July 17, 2007

November 8, 2007

Discussion and Possible Action

- Draft Regulations re Manipulation Under Anesthesia Chiropractic Standard Care

PUBLIC COMMENT

NEW BUSINESS – Future Agenda Items

ADJOURNMENT

MUA COMMITTEE

Frederick Lerner, D.C., Chair

Hugh Lubkin, D.C.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting is accessible to individuals with physically disabilities. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

At the California Chiropractic Board of Examiners meeting on January 10, 2008, the Board members voted to release to the public the following legal opinion. The opinion will be used as underlying data when the Board notices its proposed regulations setting forth the standard of care when a chiropractor performs MUA.

STATE OF CALIFORNIA

STATE AND CONSUMER SERVICES AGENCY

Memorandum

To: **BRIAN STIGER**
Executive Officer
Board of Chiropractic Examiners

Date: December 13, 2007

From: **Division of Legal Affairs**
Department of Consumer Affairs

Telephone: (916) 574-8220
Fax: (916) 574-8623

Subject: Manipulation Under Anesthesia Chiropractic Scope of Practice

The Board of Chiropractic Examiners ("Board") Manipulation Under Anesthesia ("MUA") Committee has been directed by the Board to draft regulations setting forth the standard of care to be met when a chiropractor is performing MUA. As part of that process, the Committee has requested a legal opinion from the Legal Affairs Division of the Department of Consumer Affairs as to whether the performance of MUA is within the scope of practice of a licensed chiropractor. For purposes of this memorandum, MUA is defined as the manipulation¹ of a patient who is sedated by the administration of anesthesia by a physician and surgeon or other health care provider who is legally authorized to administer anesthesia.

Question:

Is the performance of MUA on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider within the scope of practice of a chiropractor?

Answer:

The performance of MUA on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider who is legally authorized to administer anesthesia is within the scope of practice of a chiropractor.

¹ For purposes of this opinion, "manipulation" means the manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord.

DISCUSSION

BACKGROUND

Board records show that as of 1990, the Board's position has been that MUA is within the scope of practice of a chiropractor.² On July 23, 1992, the Board held an informational hearing in San Diego, California on MUA. Shortly after the hearing started, a member of the public asked the Board "[W]hat up until this day is our Board's opinion on manipulation under anesthesia?" The Board Chairman at this time, Dr. Louis E. Newman, D.C., responded, "[T]he opinion of the Board has been that a chiropractic adjustment performed properly is a chiropractic adjustment, whether it is performed under anesthesia or not. And that's been the Board's position...."³ The issue has arisen several times since 1990 due to changes in Workers Compensation laws, inquiries from other healing arts practitioners, and law enforcement agency actions.

ANALYSIS

The historical context of the Chiropractic Initiative Act of 1922 ("Chiropractic Act") was set out in *People v. Schuster*, (1932) 122 Cal.App.Supp. 790, 792. "When the Medical Practice Act was adopted in 1913, it was the only act regulating the practice of the healing arts. It applied to chiropractors, and required them to have certificates issued by the board of medical examiners. But in 1922 an act regulating the practice of chiropractor was adopted as an initiative measure. (Stats. 1923, p.lxxxviii.)" The passage of the Chiropractic Act did not repeal or amend any part of the 1913 Medical Practices Act ("MPA"). Instead, it provided an exception to the 1913 MPA by allowing the practice of chiropractic as authorized by the Chiropractic Act. (*People v. Mangiagli*, (1950) 97 Cal.App.2d Supp. 935, 938.)

Section 7 of the Chiropractic Initiative Act of California reads:

One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, **nor the use of any drug or medicine now or hereafter included in materia medica.** (Emphasis added.)

² *Minutes of the Public Meeting of the Board of Chiropractic Examiners*, September 13, 1990, agenda item 11, at page 13.

³ Transcription from Informational Hearing, Manipulation Under Anesthesia, July 23, 1992, San Diego, California.

California courts have interpreted Section 7 to create a three-part test to determine if an act or procedure is within the chiropractic scope of practice. According to the holdings in these cases the following three prongs must be satisfied. (*Fowler v. Appellate District, Superior Court of Los Angeles, County of Los Angeles*, (1938) 32 Cal.App.2d 737, *Hartman v. Court of Appeal*, (1935) 10 Cal.App.2d 213, and *Tain v. State Board of Chiropractic Examiners*, (2005)130 Ca.App.4th 609.)

- (1) an act or procedure must be understood as chiropractic in its ordinary and general sense
- (2) it must have been taught in the chiropractic schools in 1922, and
- (3) it does not constitute the practice of medicine.

It is well established that "manipulation" is within the scope of practice of a chiropractor. In *Crees v. California State Board of Medical Examiners* (1963) 213 Cal.App.2d 195, 205, the court described the chiropractic scope of practice to include the "treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord." The Board later adopted a regulation that codified the holding in *Crees*, the California Code of Regulations reads: "A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereof." (Section 302(a)(1).) Consequently, the first prong that a procedure must be understood as chiropractic in its ordinary and general sense has been met.

An argument has been raised that MUA was not taught in chiropractic schools in 1922 and therefore it is not within the scope of practice. However, the courts have made it clear that the chiropractic profession is not frozen in time. The trial court in *Crees* discussed this very point. "It is true that chiropractic is not a static system of healing and that it may advance and change in technique, teaching, learning, and mode of treatment within the limits of chiropractic as set forth in paragraph H above. It may not advance into the fields of medicine, surgery, osteopathy, dentistry, or optometry." (p. 202) This dynamic interpretation of the practice of chiropractic is not without limitation. The *Hartman* case made the point that the Chiropractic Act must be read as whole and "cannot be taken as authorizing a license to do anything and everything that might be taught in a school. A short course on surgery or one in law might be given, incidentally, and it would not follow that the section would authorize a licensed chiropractor to engage in such other professions."⁴ However, since manipulation was taught in the schools in 1922, the second prong of the three-part test has been met.

⁴ *Hartman*, at p. 218.

The last prong that must be met is that the practice does not constitute the practice of medicine. The prohibition against chiropractors using drugs derives from the prohibition against chiropractors practicing medicine. The court in *Fowler* stated: "The statute declares that persons licensed under it shall not practice medicine, a practice which certainly includes the use and prescribing of medicines in whatever form or combination they may be prepared or sold."⁵ It is common knowledge and not controversial that chiropractors have been treating patients who have been prescribed drugs by other healing arts practitioners authorized to prescribe drugs. For example, a patient may be prescribed pain medication by a physician and surgeon after incurring a back injury and seek treatment from a chiropractor. Any other interpretation of the term "use drugs" would lead to the absurd result that a chiropractor could never treat a patient who is taking any drug for any type of ailment. This would include a drug related to the injury for which the patient is seeking treatment from a chiropractor as well as unrelated ailments such as high blood pressure.

Some have put forth the argument that the term "use" should be given its broadest application. For example, if the only way a chiropractor would be able to manipulate a patient is if the patient is sedated, the chiropractor is "using" drugs to accomplish the procedure. This interpretation is not supported by case law and would not be practical in its application. A chiropractor is not authorized to direct a patient to either take a drug or discontinue using a drug. If a patient came in who was using pain medication, the chiropractor would have to decide either to not provide any treatment or to provide treatment and later be accused of using drugs because a determination was later made that the chiropractor could not have performed the procedure unless the patient was drugged. This interpretation would also lead to an impractical situation for the Board's enforcement program. It would have to be proven at an administrative hearing that a patient at the time a patient received treatment would not have been able to receive that treatment without benefit of drugs. How much pain must a patient tolerate before it is determined that a treatment cannot be performed without using drugs? This would put both the patient and the chiropractor in an untenable situation.

Oftentimes, patients of other healing arts practitioners are medicated in order to ease discomfort related to treatments. For example, many patients are medicated before receiving physical therapy. The medication is necessary not only to ease the pain associated with the treatment but also to allow greater benefit to the patient. MUA is no different.

Consequently, the third prong of the test has been met since MUA does not constitute the practice of medicine as the chiropractor is not using, administering or dispensing drugs to a patient.

⁵ *Fowler*, 32 Cal.App.2d at 751.

CONCLUSION

The performance of MUA by a chiropractor on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider who is legally authorized to administer anesthesia is within the scope of practice of a chiropractor.

DOREATHEA JOHNSON
Deputy Director
Legal Affairs


By LaVONNE POWELL
Senior Staff Counsel

Board of Chiropractic Examiners

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<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Manipulation Under Anesthesia (MUA) Committee** of the **Board of Chiropractic Examiners** will be held as follows:

January 10, 2008

Upon Conclusion of the Enforcement Committee Meeting
which is scheduled to start at 9:00 a.m.

Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Approval of Minutes

July 17, 2007
November 8, 2007

Discussion and Possible Action

- Draft Regulations re Manipulation Under Anesthesia Chiropractic Standard Care

PUBLIC COMMENT

NEW BUSINESS – Future Agenda Items

ADJOURNMENT

MUA COMMITTEE

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C.

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Manipulation Under Anesthesia (MUA)****Tuesday, July 17, 2007****12:30 p.m.**

**Department of Consumer Affairs
1625 N. Market Blvd., Ste. S102
Sacramento, CA 95834**

COMMITTEE MEMBERS PRESENT

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 12:35 p.m.

Roll Call

Dr. Lubkin called the roll. Both committee members were present.

Discussion and Possible Action re Issues in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Mr. Prescott petitioned the Board to define the practice rights of chiropractors. Mr. Prescott explained that under the statute in which the petition was filed, the Board must schedule a public meeting to hear the petition.

Mr. Prescott's stated his position is that the basic fundamental practice right of chiropractors was intended to be the same as it was for drugless practitioners. Physicians and surgeons under the 1913 Act may treat injuries, diseases, deformities or other physical or mental conditions -- so can drugless practitioners.

Mr. Prescott states the intent of the 1922 Chiropractic Act was to grant to chiropractors that same basic practice right and then the exceptions need to be considered.

Mr. Prescott states he has volumes of information to support his position that he would like to present to the Board, which will take up to a day and a half to present. Mr. Prescott wants the evidence be entered into the public record so that the evidence can be examined.

Dr. Lubkin asked Mr. Prescott how much information he had to get an idea of how much time board members would need to devote to this subject.

Mr. Prescott offered to scan the information on a DVD and provide to the Board. Ms. Powell raised concerns about copyright laws with regards to Mr. Prescott's evidence.

Mr. Prescott offered a three step process in moving forward.

Phase One: Determine the scope of practice intended by the 1922 Act.

Phase Two: Determine if the Board has the authority to adopt a new scope of practice.

Phase Three: Adopt regulations to define the new scope of practice.

Mr. Prescott requests the opportunity to present the information to the Board. Ms. Powell explained that even if the Board agreed with Mr. Prescott's legal argument, the Board has discretion on moving forward with regulations.

Dr. Learner recognized and thanked Mr. Prescott for his presentation and acknowledged the significance of Mr. Prescott's argument.

The committee agreed to place this topic on the next committee meeting and allow Mr. Prescott 1 ½ hours to make his presentation.

Discussion and Possible Action re September 9, 2004 MUA Regulation that was Disapproved by the Office of Administrative Law

Dr. Learner explained that the Board promulgated regulations in 2005, which were rejected by the Office of Administrative Law. Dr. Learner informed the public that Drs Learner and Lubkin, Ms. Powell, and Mr. Stiger met with representatives from OAL earlier this morning to discuss the issues with the previous regulation package. OAL representatives explained that the Board needed a legal opinion supporting its position that MUA is within the scope of practice of a chiropractor before submitting new regulations. Dr. Learner asked Ms. Powell to provide a written opinion and submit it to the MUA committee. Ms. Powell stated that she would hope to have the opinion to the Committee by the end of October. Ms. Powell also told the Committee members that the opinion would be confidential unless the Committee members agreed to release it to the public.

Meeting Adjourned

Dr. Learner adjourned the meeting at 1:10 p.m.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Manipulation Under Anesthesia (MUA)****Thursday, November 8, 2007****12:30 p.m.****2525 Natomas Park Drive, Suite 100
Sacramento, CA 95834****COMMITTEE MEMBERS PRESENT**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 12:38 p.m.

Roll Call

Dr. Lubkin called the roll. Both committee members were present.

Discussion and Possible Action re Issues in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Mr. Prescott began by introducing the materials that he planned to discuss. Ms. Powell, expressed her concerns about copyrighted material being reproduced. Mr. Prescott committed to providing the Board the written authorization he received to use his information.

Mr. Prescott states that since 1923 the Board has the 20 sections of the Chiropractic Act, 19 original sections plus one amendment. However, he states that not only did the people vote in 1922 for the original 19 sections, but an additional section, which is longer than the 19 original sections. Mr. Prescott says the original ballot measure contains important revisions, deletions, and amendments as identified by black faced type, italics, and asterisks.

Mr. Prescott states that the 1922 Chiropractic Act cannot be fully understood unless one reviews the missing second half of the statute and the 1913 Medical Practices Act. Mr. Prescott says that the 1913 Medical Practice Act and the 1922 Chiropractic Act have an intimate connection.

Mr. Prescott discusses the history of legal decisions including, Crees, Fowler, and Tain, and educational requirements framing the practice of Chiropractic in California. He further reviews the original ballot measures and highlights scope of practice and educational requirements. Mr. Prescott compares and contrasts the practice rights and educational curriculum of drugless practitioners and chiropractors.

Mr. Prescott petitioned the Board to define the practice rights of chiropractors. Mr. Prescott explained that under the statute in which the petition was filed, the Board must schedule a public meeting to hear the petition.

Mr. Prescott's stated his position is that the basic fundamental practice right of chiropractors was intended to be the same as it was for drugless practitioners. Physicians and surgeons under the 1913 Act may treat injuries, diseases, deformities or other physical or mental conditions – so can drugless practitioners. Mr. Prescott states the intent of the 1922 Chiropractic Act was to grant to chiropractors that same basic practice right as drugless practitioners and then the exceptions need to be considered.

Mr. Prescott explained that section 302 of the Board's regulations prohibit chiropractors from using homeopathic remedies for any purpose. Mr. Prescott discussed a study conducted by the National Board of Chiropractic Examiners in 1993 that concluded that between 36.5% and 49.3% of chiropractors in the state of California use homeopathic remedies. Mr. Prescott asked is section 302 correct?

Mr. Prescott explains that the Act cannot perform surgery and section 302 says chiropractors cannot perform surgery, sever or penetrate tissues. Mr. Prescott references the Chong case in which Chong argues that the law is unconstitutional because when a chiropractor performs a manipulation, tissues are being severed or penetrated. Mr. Prescott explained that, according to the 1913 Medical Practice Act, sever means performed by cutting with a knife.

Mr. Prescott states that the AG's office has written 26 opinions without ever addressing the entire ballot.

Dr. Lerner thanked Mr. Prescott for his presentation and research. Dr. Lubkin asked if the materials would be placed on the web site. Mr. Stiger said the materials would be posted once the board received the copyright information from Mr. Prescott.

Discussion and Possible Action re Promulgation of Regulations re MUA

Dr. Lerner explained the history of a regulatory package submitted to the Office of Administrative Law in 2005, which were rejected. Ms. Powell explained that rejections from the Office of Administrative Law are not unusual and should not be reflective negatively upon the board.

Dr. Lerner stated that the Board has held since 1990 that MUA is within the chiropractic scope of practice. Dr. Lerner asked Ms. Powell about the status of the legal opinion and she explained that after it's completed it still needs to be approved by her supervisor.

Ms. Powell explained that the Board has only one license, which entitles the licensee to perform the full scope of practice. Ms. Powell stated the Board has clear authority to set standards of care. Ms. Powell recommended that the Board review the standard of care from the national organization and identify how the procedure is being performed and in what type of facility.

Mr. Stiger stated that the Board is interested in making sure that consumers are being protected in those instances when the procedure is being performed. It is important to receive input from the profession on these standards.

Ms. Powell recommended that the Board include language that discusses if a chiropractor is performing MUA that a physician surgeon or other authorized health care provider is solely in charge of the sedation and the chiropractor cannot direct them. Ms. Powell recommends that chiropractors clearly understand their limited role during MUA.

Dr. Lerner reiterated that we can define what MUA is and what it is not, we can designate the type facility it is performed in, we cannot require chiropractors to take certain classes. Ms. Powell recommends that the board define sedation and every aspect of the procedure, including emergency procedures, monitoring, and follow up procedures to protect any patient under going the procedure.

Dr. Charles Davis offered suggestions on what not to put into the standard of care to avoid potential litigation.

Mr. Prescott suggested that MUA instruction be provided in chiropractic schools.

Dr. Lubkin stated that in his opinion that all duly licensed chiropractors in California are qualified to perform manipulation while the patient is under anesthesia.

A member of the public stated that if a chiropractor could not perform a manipulation without the patient being under anesthesia raises a concern.

New Business:

Dr. Lubkin asked that the committee meet again by the end of the year or early next year. Ms. Powell suggested that we don't meet until we have a working document.

Meeting Adjourned

Dr. Lerner adjourned the meeting at 3:57 p.m.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING**

Notice is hereby given that a meeting of the **Manipulation Under Anesthesia (MUA) Committee** of the **Board of Chiropractic Examiners** will be held as follows:

March 27, 2008

Upon Conclusion of the Enforcement Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA**Call to Order****Discussion and Possible Action**

- MUA Standard of Care Draft Regulations

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****MUA COMMITTEE**

Frederick Lerner, D.C., Chair

Hugh Lubkin, D.C.

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March 27, 2008

Upon Conclusion of the Enforcement Committee Meeting

Hearing Room

400 R Street, Room 101

Sacramento, CA 95814

AGENDA

Call to Order

Discussion and Possible Action

- MUA Standard of Care Draft Regulations

PUBLIC COMMENT

NEW BUSINESS – Future Agenda Items

ADJOURNMENT

MUA COMMITTEE

Frederick Lerner, D.C., Chair

Hugh Lubkin, D.C.

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Proposed Regulatory Language for MUA

The following standards apply to any manipulation under anesthesia ("MUA") procedure performed by a duly licensed chiropractor in the State of California:

MUA may only be performed by a chiropractor that is trained and competent to perform manipulation on a patient who is sedated by application of anesthesia.

MUA may only be performed in a hospital or ambulatory surgery center duly licensed by the State of California. (need citation)

Anesthesia may only be provided by a qualified licensed physician and surgeon, or other health care provider authorized by law to administer anesthesia. The chiropractor may not direct, instruct, interfere, or make any orders to the qualified licensed physician and surgeon, or other health care provider who is administering and maintaining the anesthesia.

MUA shall be performed by two licensed chiropractors. The primary chiropractor shall formulate the chiropractic portion of the MUA treatment plan and shall be responsible for performing the chiropractic manipulation for that procedure. The second chiropractor shall act as the first assistant to insure that all movements are accomplished with patient care and safety as his or her primary focus and shall assist the primary chiropractor as directed. The chiropractic portion of MUA is limited to techniques within the scope of practice for a chiropractor.

For purposes of this section, the primary chiropractor and the second chiropractor may not be involved in the discharge of the patient following the MUA procedure.

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**NOTICE OF PUBLIC MEETING****Public Relations Committee****May 7, 2008**

Upon Conclusion of the Government Relations Committee
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA**CALL TO ORDER****Public Comment****Discussion**

- Overview of the Department of Consumer Affairs Public Relations Services

Discussion and Possible Action

- Development of Board of Chiropractic Examiners' Newsletter

Discussion and Possible Action

- Development of Consumer Education Material

Discussion and Possible Action

- Development of Board of Chiropractic Examiners' Seal

Public Comment**Future Agenda Items****ADJOURNMENT****PUBLIC RELATIONS COMMITTEE**

Frederick Lerner, D.C., Chair
Jim Conran

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

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NOTICE OF PUBLIC MEETING

Public Relations Committee

May 7, 2008

Upon Conclusion of the Government Relations Committee
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

Public Comment

Discussion

- Overview of the Department of Consumer Affairs Public Relations Services

Discussion and Possible Action

- Development of Board of Chiropractic Examiners' Newsletter

Discussion and Possible Action

- Development of Consumer Education Material

Discussion and Possible Action

- Development of Board of Chiropractic Examiners' Seal

Public Comment

Future Agenda Items

ADJOURNMENT

PUBLIC RELATIONS COMMITTEE

Frederick Lerner, D.C., Chair
Jim Conran

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

SAMPLE



California Department of Consumer Affairs
ACUPUNCTURE BOARD

A Consumers Guide to

Acupuncture and Oriental Medicine



SAMPLE



Additional copies of this publication are
available from:

Department of Consumer Affairs
ACUPUNCTURE BOARD

444 North 3rd Street, Suite 260
Sacramento, CA 95814-0226

For more information call 916/445-3021, or
visit the Acupuncture Board Web site:
www.acupuncture.ca.gov

Revised 2004

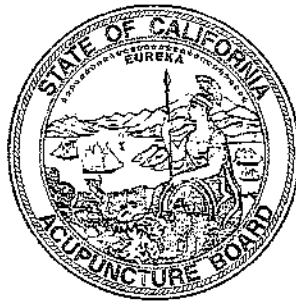
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California Department of Consumer Affairs

ACUPUNCTURE BOARD

A Consumers Guide to
**Acupuncture
and Oriental
Medicine**



Arnold Schwarzenegger, Governor
State of California

Fred Aguiar, Secretary
State and Consumer Services Agency

Charlene Zettel, Director
Department of Consumer Affairs

A Consumers Guide to



Acupuncture and Oriental Medicine

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What Is Acupuncture and Oriental Medicine?

The theory and practice of acupuncture is based on Oriental medicine (also known as traditional Chinese medicine), a comprehensive natural health care system that has been used in Asian countries for thousands of years to preserve health and diagnose, treat and prevent illness.

Acupuncture treats health conditions by stimulating "acu-points" found at specific locations on the surface of the body. Acupuncturists stimulate the acu-points by inserting very thin needles through the skin to produce physiological effects. Other methods are also used to stimulate acu-points, such as heat or finger-pressure.

The general theory of acupuncture is that proper physiological function and health depend on the circulation of nutrients, substances and energy called Qi (pronounced "chee") through a network of "channels" or "meridians." This network connects every organ and part of the body, providing balance, regulation and coordination of physiological processes.

Pain and ill-health result when the flow of Qi through the body is disrupted or blocked by many things, including disease, pathogens, trauma/injuries and medica-

tion (side-effects), as well as lifestyle factors such as overwork, poor diet, emotions, lack of rest and stress.

Stimulation of the appropriate acu-points through acupuncture treatments helps to restore sufficient, continuous and even flow of Qi and other nutrients throughout the body, thereby restoring health and balance to the body, while relieving pain and other symptoms.

The acupuncturist uses a sophisticated and complex system of diagnostic methods that take into consideration the person as a whole, discerning the body's pattern of disharmony rather than isolated symptoms. The aim is not only to eliminate or alleviate symptoms, but more importantly to treat the underlying cause, increase the ability to function and improve the quality of life.

Acupuncture and Oriental medicine is one of the newest primary health care professions in California. The potential benefits of acupuncture are widely recognized, and it is being increasingly integrated with mainstream health care. Since the 1970's, when acupuncture and Oriental medicine first became available in the United States, more than 15 million Americans have tried it. The risk of side effects is low and the potential benefits are high. Knowing what to expect from acupuncture will help patients get the most benefit from treatments. The purpose of this booklet is to help consumers approach acupuncture treatment from an informed perspective.

*"The aim is
not only to
eliminate or
alleviate
symptoms...
but to treat the
underlying
cause... and
improve the
quality of life"*



.....

Endorsement by the National Institutes of Health

In November 1997, the National Institutes of Health (NIH) convened a panel of 12 distinguished physicians and scientists to review the history, licensing, practice and current status of clinical research on the effectiveness of acupuncture. The first formal endorsement of acupuncture by the NIH stated: "There is sufficient evidence of acupuncture's value to expand its use into conventional medicine and to encourage further studies of its physiology and clinical value."

The panel determined there is clear evidence that needle acupuncture is effective for post-operative, chemotherapy and pregnancy-related nausea and vomiting, and for post-operative dental pain. Other conditions for which evidence is good but further substantiation is required include: post-operative pain, myofascial and lower back pain, addiction, stroke rehabilitation, carpal tunnel syndrome, osteoarthritis, headache, tennis elbow, fibromyalgia, menstrual cramps and asthma. The panel noted the World Health Organization has identified more than 40 conditions for which acupuncture may be helpful. The panel found that one of the advantages of acupuncture is that the incidence of adverse effects is substantially lower than that of many drugs or other accepted medical procedures used for the same conditions. To read the NIH Consensus Statement, go to http://consensus.nih.gov/cons/107/107_intro.htm.

*"There is sufficient evidence of
acupuncture's value to expand its use
into conventional medicine..."*

.....

Licensed Acupuncturists in California

The State of California has led the nation in the field of acupuncture, being the first to license qualified practitioners as primary health care professionals in 1979. To qualify for licensing in California, a student must attend a California Acupuncture Board-approved school to receive theoretical and clinical training and graduate with a master's degree. Upon graduation, qualifying candidates must pass a comprehensive state licensing exam. A valid license issued by the Board must be posted in a conspicuous office location.

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What To Expect From Acupuncture Treatment

Being informed and understanding what to expect from acupuncture treatment from the beginning will make you feel more comfortable about the experience.

Determine Your Goals Are you looking for a primary health care practitioner or someone who will work with your current physician? Are you seeking short-term treatment for a specific complaint or do you want a prevention-oriented, holistic approach to the health of mind, body and spirit that acupuncture and Oriental medicine can provide? Do you have a work-related injury that is covered by Workers' Compensation?

Select a Practitioner Ask friends, relatives, your doctor or your health plan for a referral to a reputable practitioner. You can access a list of professional associations or verify a license through the California Acupuncture Board's Web site: www.acupuncture.ca.gov

*"Being
informed and
understanding
what to
expect...
will make you
feel more
comfortable
about the
experience"*

Continued on following page

.....

What To Expect From Acupuncture Treatment *continued*

Once you have some names, call the practitioners' offices and ask questions. Find out about their training, length of practice, which aspects of acupuncture and Oriental medicine they employ, any specializations and their experience in treating your ailment. You may also want to ask about the cost of treatment.

Diagnosis An acupuncturist's diagnosis is determined in part using methods similar to other health care practitioners: asking patients for a thorough history of their health, diet, exercise patterns and chief complaints; performing a physical exam, ordering laboratory tests, X-rays or MRIs; and making a referral to a specialist, as necessary. However, the acupuncturist also uses unique diagnostic techniques, such as taking the patient's pulse on both wrists and observing the tongue, complexion and other signs. The three pulses felt on each wrist are thought to correspond to certain organs and functions. The practitioner should explain the nature of your problem, the recommended treatment plan and an anticipated prognosis (outcome).

Treatment Procedures Modern acupuncture needles are stainless steel, between one-half and three inches long, ultra-fine and quite flexible. They are pre-sterilized, nontoxic and disposable (single use). When the needles are tapped into the skin, there may not be any sensation. Much depends on the location (hands and feet tend to be more sensitive), the condition being treated and the acupuncturist's technique. Needles are typically placed in several acu-points and are usually left in about 20-40 minutes. The goal is to normalize the circulation of Qi and blood by stimulating the energy point, which encourages the body's natural healing process. Stimulation can



be done by rotating the needles manually or attaching electrodes to send a weak electric current through the needles (electroacupuncture).

The number of treatments depends upon the duration, severity and nature of your health condition. Two or three treatments may be sufficient for an acute condition, while a series of 5 to 15 treatments may be needed to resolve chronic conditions. Some degenerative conditions may require ongoing treatments over a long period of time.

Techniques used may include: moxibustion (burning herbs to heat acupoints), cupping (suction), auricular therapy (ear acupuncture), tui na (manipulation) and acupressure.

Patients should evaluate their progress after each session. Some relief should be apparent in two or three sessions, or six to eight sessions for more pervasive conditions. If you see encouraging signs, stick with it. Ask your practitioner questions about your treatment and improvement. If your response to treatment is not satisfactory, the practitioner may consider further diagnostic exams, modify the treatment plan or refer to an appropriate practitioner, if necessary.

Treatment Precautions It is not recommended to have an acupuncture treatment if you are very hungry or extremely tired.

Some bruising may occasionally occur after needling. If you have a bleeding disorder or are on blood-thinning medications, you should inform your acupuncturist before undergoing treatment.

If you are pregnant or have a pacemaker, tell the acupuncturist so that appropriate herbs and acu-points will be chosen.

"If you see encouraging signs, stick with it. Ask your practitioner questions about your treatment and improvement"

Continued on following page

What To Expect From Acupuncture Treatment *continued*

"Most herb formulas can treat a wide variety of symptoms while stimulating the body's natural healing process."

Herbal Therapy In the course of your treatment Chinese herbal remedies may be prescribed. They may be dispensed as raw herbs or in pills, capsules, granules, or tinctures which make them easier to ingest. Most herb formulas can treat a wide variety of symptoms while stimulating the body's natural healing process.

In California, acupuncturists are the only licensed health care professionals who are required to be trained and tested for competency in prescribing herbal medicine. California-approved acupuncture schools offer a minimum of 450 classroom hours of instruction in traditional Oriental herbology in addition to clinical training. Chinese herbal medicine has been practiced safely and effectively for centuries and has the greatest potential for beneficial results when prescribed by a trained professional who recognizes the benefits and risks.

In recent years, herbs have become very popular to self-treat many conditions. They are available in health food stores, supermarkets and on the Internet. While herbs are promoted as safe, inexpensive "natural" alternatives to pharmaceutical drugs, many health care professionals have concerns about safety, effectiveness and potential misuse of herbal products, especially when self-prescribed. There are also questions of purity, strength and standardization of herbs.

The California Acupuncture Board strongly recommends consulting an acupuncturist before beginning any herbal therapy. Also, it is very important to inform both your physician and acupuncturist of all the products you are currently taking (drugs, herbs, other

supplements) so they can monitor effectiveness, ensure safety from adverse reactions and watch for possible interactions. If you have an allergic reaction to any herbs, let your acupuncturist know.

.....

Who Can Benefit?

Patients of acupuncturists range from infants to senior citizens. They may be seeking an alternative to Western medicine or it may be their last hope for relief, having exhausted other methods of treatment for a chronic condition. Or, an acupuncturist may be their first choice of health care practitioner for a low-risk form of treatment with few side effects.

.....

What About Insurance Coverage?

Most California insurance plans include acupuncture treatment in their policies. Ask your insurer about coverage or reimbursement. Some plans that don't normally cover acupuncture will pay for treatments if a physician recommends them. Many acupuncturists are providers for traditional PPO and HMO plans. Acupuncturists are covered under California State Medi-Cal and Workers' Compensation.

“Most California insurance plans include acupuncture treatment in their policies.”



California Acupuncture Board

The California Acupuncture Board issues licenses and regulates the profession according to the Acupuncture Licensure Act, which identifies acupuncture as a primary health care profession. The Board is an autonomous body under the Department of Consumer Affairs. The primary responsibility of the Acupuncture Board is to protect consumers from incompetent, unprofessional and fraudulent practitioners.



The Board establishes standards for the approval of schools, tutorial programs and continuing education; oversees the administration of the licensing examination; issues new and renewal licenses; and handles enforcement issues when complaints are received. The Board strives to promote safe practice through the improvement of educational training standards.

For complete information on the responsibilities of the Acupuncture Board, please see the Board's Web site: www.acupuncture.ca.gov

The mission of the California Acupuncture Board is to benefit and protect the public through appropriate regulation of licensure, education standards, and enforcement of the Acupuncture Licensure Act.

How Are Complaints Filed?

A complaint should be filed by anyone who believes that a licensed acupuncturist has engaged in illegal or unethical activities related to their professional responsibilities. Anyone may file a complaint, and the Board will review each complaint received.

The most effective complaints are those that contain firsthand, verifiable information. While anonymous complaints will be reviewed, many times it is impossible to pursue without documented evidence of the allegations made.

All complaints **MUST** be in writing and include the names, addresses and phone numbers of both the person making the complaint and the licensee. Please explain, in your own words, the nature and facts of your complaint. Include as much information as possible, including any documentary evidence available. You may use the consumer complaint form or file a complaint online at the Board's Web site, under Enforcement.

Complaints should be sent to:

ACUPUNCTURE BOARD
444 North 3rd Street, Suite 260
Sacramento, CA 95814-0226

*"The most effective complaints
 are those that contain firsthand,
 verifiable information."*





Conditions Treated

Treatment efficacy depends on the severity and nature of the condition being treated. Acupuncturists are trained to identify conditions that may require referral to a specialist, so it is important for you to provide detailed information about your condition so that important medical problems are not overlooked.

If you are under the simultaneous care of different health practitioners, it is important to keep all of them informed about your treatments to ensure there are no adverse interactions among treatments.

The following is a list of health conditions commonly treated by licensed acupuncturists.

- **allergies/asthma**
- **anxiety/depression**
- **arthritis/joint problems**
- **back and neck pain**
- **bladder/kidney problems**
- **childhood illnesses**
- **constipation/diarrhea**
- **colds/influenza**
- **cough/bronchitis**
- **dizziness**
- **drug/alcohol/smoking addiction**
- **effects of chemotherapy**

- **fatigue**
- **gastrointestinal disorders**
- **headache/migraine**
- **high blood pressure**
- **immune system deficiency**
- **knee pain**
- **menopausal discomfort**
- **musculoskeletal injuries**
- **pre-menstrual syndrome**
- **paralysis/numbness**
- **rhinitis**
- **sciatica**
- **sexual dysfunction**
- **sinusitis**
- **skin problems**
- **stress/tension**
- **tendonitis**



*“... it is important
to keep all your
providers informed
about your
treatments”*



SAMPLE



California Department of Consumer Affairs

ACUPUNCTURE BOARD

444 North 3rd Street, Suite 260
Sacramento, CA 95814-0226

Board of Chiropractic Examiners

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CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****PUBLIC RELATIONS COMMITTEE**

July 17, 2008

Upon Conclusion of the Scope of Practice Committee Meeting

State Capitol

Assembly Room 126

Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of the Minutes**

May 7, 2008

Public Comment**Discussion and Possible Action**

- Development of Board of Chiropractic Examiners' Newsletter

Discussion and Possible Action

- Development of Consumer Education Material

Discussion and Possible Action

- Web Site Updates

Discussion and Possible Action

- Contracting for Public Affairs Services

Public Comment**Future Agenda Items****ADJOURNMENT****PUBLIC RELATIONS COMMITTEE**

Frederick Lerner, D.C., Chair

Jim Conran

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Public Relations Committee****May 7, 2008****2525 Natomas Park Drive, Ste. 120
Sacramento, CA 95833****Committee Members Present**

Frederick Lerner, Chair
Jim Conran, Public Member

Staff Present

Brian Stiger, Executive Officer
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 1:56 p.m.

Roll Call

Mr. Conran called the roll. All committee members were present.

Overview of the Department of Consumer Affairs Public Relations Services

Russ Heimerich from the Department of Consumer Affairs (DCA) provided an overview of the Public Affairs Office. DCA develops and distributes several consumer brochures and publications regarding all of the licensed professions within DCA. The Public Office also prepares media spots and responds to reporter questions and inquiries. The office attends over 900 consumer events annually to keep consumers informed. Currently, they are concentrating on media pertaining to the mortgage crisis and unlicensed activity. DCA also designs and develops newsletters for many of the boards and bureaus.

Dr. Lerner stated that the Board needs public relations services through a state agency or contracting with a private organization. Dr. Lerner stated that we need to determine the costs for these services.

Mr. Conran said the state typically uses services provided by other state agencies.

Mr. Heimerich discussed the challenges going out to bid for services including time and costs; however, the creativity may be improved with an outside contract.

Mr. Conran cautioned that contracting outside the state is a headline waiting to happen if something goes wrong with the contract.

Mr. Heimerich stated that DCA has a lot of experience working with regulatory boards and determining what information should be released to the public.

Mr. Heimerich mentioned that most boards use their own staff to write articles for newsletters and DCA provides the finishing edits.

Mr. Heimerich recommended that the Board conduct a communication audit to determine the greatest need.

Mr. Conran suggested that Mr. Stiger consult with DCA to determine costs and options for a full complement of public relations services.

Mr. Heimerich recommended that the board could begin now communicating with licensees through the license renewal process.

Development of Board of Chiropractic Examiner's Newsletter

Dr. Lerner stated that a newsletter is desperately needed to provide information to consumers and the profession. Dr. Lerner mentioned that the newsletter could be sent out in mailers or electronically.

Mr. Stiger stated that he will be working with IT to develop an e-mail subscription list, which will be placed on the board's website. This will be used to communicate important information to licensees and the public.

Mr. Stiger suggested that the committee establish a schedule for the newsletter's distribution.

Dr. Lerner recommended that the newsletter be distributed quarterly because of all the policy changes that have been made.

Mr. Conran suggested that a quarterly newsletter be placed on the web site to save time and money.

Dr. Lerner raised a concern that licensees need to know when regulatory changes are made to ensure they remain in compliance.

Dr. Lerner asked how does the Board notify licensees of regulatory changes. Mr. Stiger answered the Board can notify licensees through web site postings, press releases, and working through associations.

Development of Consumer Education Material

Dr. Lerner discussed the need for the Board to develop consumer education material to help protect the public and provided an example of a brochure the Acupuncture Board developed. Dr. Lerner said the public needs relevant information to make a good decision in choosing a chiropractor.

Mr. Stiger stated Board staff began working with the associations last year on a document that provided tips on how to choose a chiropractor, which would be a good place to start.

Mr. Conran agreed that the Board needs to provide collateral material to the public to assist with consumer education. Mr. Conran recommended that the material be written in different languages and just state the facts.

Kendra Holloway, Life Chiropractic, stated that the Chiropractic Colleges would like to participate in this effort.

Dr. Lerner said he would like to establish a work group to begin working on document.

MOTION: MR. CONRAN MOVED THAT THE BOARD DEVELOP A CONSUMER EDUCATION MATERIAL AND THAT IT BE PRINTED IN DIFFERENT LANGUAGES.

SECONDED: DR. LERNER SECONDED THE MOTION.

VOTE: 2-0

MOTION CARRIED.

Development of Board of Chiropractic Examiners' Seal

Dr. Lerner stated that the Initiative Act authorizes the Board to develop a state seal. Dr. Lerner stated he would like to employ a graphic designer to develop a seal.

Mr. Heimerich stated that DCA has developed logos for other licensing boards and this could be included in the communication audit.

MOTION: MR. CONRAN MOVED THAT THE FULL BOARD CONSIDER DEVELOPING A BOARD OF CHIROPRACTIC EXAMINERS' SEAL.

SECONDED: DR. LERNER SECONDED THE MOTION.

VOTE: 2-0

MOTION CARRIED.

Public Comment

Mr. Conran recommended that the 60 day response to the BSA audit should be placed on the Board's web site for public consumption.

FUTURE AGENDA ITEMS

Mr. Conran asked that the web casting of Board meetings be placed on the agenda.

ADJOURNMENT

Dr. Lerner adjourned the meeting at 2:50 p.m.

MEMORANDUM

Date: July 11, 2008

To: Public Relations Committee

From: Brian J. Stiger,
Executive Officer

Subject: Communications Audit

Following the last Public Relations Committee Meeting, I consulted with the Department of Consumer Affairs' Public Affairs Office to conduct a communications audit to assess the Board's short term public relations needs. The results of the audit revealed the need for the following publications and services:

Publications / Services	Possible Provider	Action Needed
E-Mail Subscription List	Department of Technology Services	Amend existing contract to include development and maintenance.
Board Newsletter	DCA and Board Staff Outside Vendor	DCA: Amend existing contract to include service Outside Vendor: Utilize the state contracting process to secure a qualified vendor
Consumer Publications <ul style="list-style-type: none"> • Board Brochure • How to Choose a D.C. 	DCA and Board Staff Outside Vendor	DCA: Amend existing contract to include service Outside Vendor: Utilize the state contracting process to secure a qualified vendor
Press Releases	DCA and Board Staff Outside Vendor	DCA: Amend existing contract to include service Outside Vendor: Utilize the state contracting process to secure a qualified vendor

Publications / Services	Possible Provider	Action Needed
Licensee Publications Town Hall Meetings Targeted Outreach Materials	DCA and Board Staff Outside Vendor	DCA: Amend current contract to include service Outside Vendor: Utilize the state contracting process to secure a qualified vendor
Develop a Board Logo	DCA Outside Vendor	DCA: Amend current contract to include service Outside Vendor: Utilize the state contracting process to secure a qualified vendor

Board staff is in the process of conducting a market place survey to gather estimated costs of the various publications and services. Once complete, this information will be provided to the committee.

If you have any questions, please contact me.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING****Scope of Practice Committee**

May 7, 2008

9:30 a.m.

**2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833**

AGENDA**CALL TO ORDER****Approval of Minutes**

- March 27, 2008

Public Comment**Discussion and Possible Action**

- Recognition of Chiropractic Specialties

Discussion and Possible Action

- Update on Meeting with California Department of Public Health Radiologic Health Branch

Discussion and Possible Action

- Issues Raised in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt Scope of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Public Comment**Future Agenda Items****ADJOURNMENT****SCOPE OF PRACTICE COMMITTEE**

Hugh Lubkin, D.C., Chair

Frederick Lerner, D.C.

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NOTICE OF PUBLIC MEETING

Scope of Practice Committee

May 7, 2008

9:30 a.m.

**2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833**

AGENDA

CALL TO ORDER

Approval of Minutes

- March 27, 2008

Public Comment

Discussion and Possible Action

- Recognition of Chiropractic Specialties

Discussion and Possible Action

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Discussion and Possible Action

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Public Comment

Future Agenda Items

ADJOURNMENT

SCOPE OF PRACTICE COMMITTEE

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Manipulation Under Anesthesia (MUA) Committee
March 27, 2008
400 R Street, Room 101
Sacramento, CA 95814**

Committee Members Present

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 9:14 a.m.

Roll Call

Dr. Lubkin called the roll. All committee members were present.

MUA Standard of Care Draft Regulations

Dr. Lerner thanks Dr. Edward Cremata and Dr. Lubkin for their work on drafting the proposed regulatory language.

Dr. Lubkin voiced his support in moving the language to the full Board for adoption.

Public Comment:

Dr. Charles Davis, International Chiropractic Association of California provided a handout of information he compiled from other states on MUA.

Kathleen Creason, Osteopathic Physicians & Surgeons of California, (OPSC) expressed concerns about the proposed language and opposes the regulations.

Roger Calton, Attorney at Law, recommended that the facility requirements be expanded and defined in California law.

Ms. Powell said she would review Dr. Davis' handout and provide the proper legal citation regarding the facilities where MUA be performed.

MOTION: DR. LUBKIN MOVED THAT THE COMMITTEE ADOPT THE PROPOSED MUA LANGUAGE AND FORWARD TO THE FULL BOARD FOR ADOPTION.

MOTION SECONDED: DR. LERNER SECONDED THE MOTION

VOTE: 2-0

MOTION CARRIED

Public Comment

None

New Business

None

ADJOURNMENT:

Dr. Lerner adjourned the meeting at 9:23 a.m.

Steven G. Becker, D.C.

Diplomate, American Chiropractic Academy of Neurology
Eligible, American Board of Chiropractic Orthopedics
Allied Medical Staff, Cedars-Sinai Medical Center
Certified, Manipulation Under Anesthesia
Qualified Medical Evaluator

BOARD OF
CHIROPRACTIC EXAMINERS

08 APR 23 AM 10 28

April 20, 2008

Mr. Brian Stiger,
Executive Director
Dr. Fred Lerner, Chair
Board of Chiropractic Examiners
2525 Natomas Park Dr., # 260
Sacramento, CA 95833

Re: Scope of Practice Committee/Chiropractic Subspecialties

Dear Mr. Stiger and Dr. Lerner:

I understand that during the course of the last Board meeting, there was some discussion or direction related to chiropractic subspecialties. If I am correct, I just wanted to take the opportunity to provide the Board with some information it may not already have in its possession, but that might go along way in clarifying some issues before the Board. Specifically, I am enclosing a copy of the Legislative Counsel of California's 11/16/99 opinion paper. As you are undoubtedly aware, the Legislative Counsel are the attorneys for the State Legislature. As such, I found their opinions regarding chiropractic subspecialties to be significant. I am also enclosing a copy of recent legal comments prepared in response to the DWC's proposed QME regulations for your review.

If you have any questions, or if I may be of further assistance, please do not hesitate to contact me anytime.

Respectfully,



Steven G. Becker, D.C.

Diane F. Boyer-Vine
Jeffrey A. DeLand
Catali DePueco

James L. Ashford
C. David Dickerson
John T. Burschaker
Donna A. Wetzman

Doris D. Allen
Francis S. Doran
Robert O. Gronke
Michael R. Kelly
Michael J. Korotkin
James A. Marsala
Robert G. Miller
Tracy O. Powell II
Miguelito Rabin
William K. Stark
Michael H. Upton
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95834-4408
(916) 445-3057
Telecopier: (916) 442-0789

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
November 16, 1999

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Lore K. Blumstein
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Jessica L. Stale
Christopher H. Swanson
Ellen Eward
Mark Franklin Terry
Jill Thom
Richard S. Weisberg
Karen L. Zicklad
Jack G. Zornien

Deputies

Honorable Martin Gallegos
6005 State Capitol

Qualified Medical Examiners: Chiropractors:
Specialties - #24401

Dear Mr. Gallegos:

QUESTION

May the Industrial Medical Council, pursuant to Section 139.2 of the Labor Code, appoint doctors of chiropractic as qualified medical evaluators in their respective chiropractic specialties?

OPINION

The Industrial Medical Council may, pursuant to Section 139.2 of the Labor Code, appoint doctors of chiropractic or qualified medical evaluators in their respective chiropractic specialties.

ANALYSIS

The Industrial Medical Council (hereafter IMC) is required to appoint physicians as qualified medical evaluators (hereafter QMEs) "in each of the respective specialties as required for the evaluation of medical issues" in workers' compensation cases (subds. (a) and (b), Sec. 139.2, Lab. C.). Section 139.2 of the Labor Code¹ reads, in pertinent part, as follows:

¹ All further section references are to the Labor Code unless otherwise stated.

"139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for two-year terms.

"(b) The council shall appoint as qualified medical evaluators physicians, as defined in Section 3209.3, who are licensed to practice in this state and who demonstrate that they meet each of the following requirements:

"(1) Pass an examination written and administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical issues in the workers' compensation system. . . .

"(2) Devote at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a qualified medical evaluator.

"(3) Meet one of the following requirements:

* * *

"(C) Declares under penalty of perjury to the council that he or she wrote 100 or more ratable comprehensive medical-legal evaluation reports and served as an agreed medical evaluator on 25 or more occasions during each calendar year between January 1, 1990, and December 31, 1994.

* * *

"(E) If a chiropractor, has either: (i) completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the council, the Board of Chiropractic Examiners and the Council on Chiropractic Education; or, (ii) been certified in California workers' compensation evaluation by an appropriate California professional chiropractic association or accredited California college recognized by the council.

* * *

"(G) Served as an agreed medical evaluator on eight or more occasions prior to January 1, 1970.

"(4) Does not have a conflict of interest as determined under the regulations promulgated by the administrative director pursuant to subdivision (o).

"(5) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

* * *

"(h) When the injured worker is not represented by an attorney, the medical director ... shall assign three-member panels of qualified medical evaluators The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who: (1) do not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o); (2) are certified by the council to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence; and, (3) have not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the council pursuant to subdivision (n) or for any other reason. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the

medical director shall include sufficient qualified medical evaluators from other geographic areas

* * *

"(n) Each qualified medical evaluator shall pay a fee, as determined by the Industrial Medical Council, for appointment or reappointment. . . .

* * *

Section 3209.3 specifies the various categories of healing arts practitioners who are deemed "physicians" for purposes of appointment as QMEs in workers' compensation cases. More specifically, subdivision (a) of Section 3209.3 reads as follows:

"3209.3. (a) 'Physician' includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

* * *

Thus, chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law are "physicians" for purposes of appointment as QMEs (subd. (b), Sec. 139.2; subd. (a), Sec. 3209.3). However, as indicated above, Section 139.2 provides that to be appointed as a QME a licensed chiropractic practitioner in general must meet all of the following requirements:

1. Pass an examination written and administered by the IMC (para. (1), subd. (b), Sec. 139.2).

2. Devote at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a QME (para. (2), subd. (b), Sec. 139.2).

3. Complete a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the IMC, the Board of Chiropractic Examiners and the Council of on Chiropractic Education; or, been certified by an appropriate California professional chiropractic association or

accredited California college recognized by the IMC (subpara (E), para. (3), subd. (b), Sec. 139.2).²

4. Not have a conflict of interest as determined under the regulations promulgated by the Administrative Director of the Division of Workers' Compensation (para. (4), subd. (b), Sec. 139.2).

5. Meet any additional medical or professional standards adopted by the IMC (para. (5), subd. (b), Sec. 139.2).

6. Pay the fee required by the IMC (subd. (n), Sec. 139.2).

The IMC has adopted regulations for the appointment of QMEs and, pursuant to subdivision (a) of Section 139.2, has adopted specialties for QMEs (see 8 Cal. Code Regs. 10.1). For licensed chiropractic practitioners there are four specialty codes:

"Non-MD/DO Specialty Codes

"DCH - Chiropractic

"DCN - Chiropractic - Neurology

"DCO - Chiropractic - Orthopaedic

"DCR - Chiropractic - Radiology

* * *

The IMC recognizes chiropractic diplomate boards whose programs are taught by the Council on Chiropractic Education accredited colleges (8 Cal. Code Regs. 11 and 12).

It is fundamental that a regulation must be within the scope of authority conferred by the enabling statute and must not alter, amend, enlarge, or impair that statute or scope (Secs. 11342.1 and 11342.2, Gov. C.; Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 391). Generally, the construction of a statute by the officials charged with its enforcement is entitled to great weight (Naismith Dental

² Certain chiropractic practitioners who have previously served as agreed medical evaluators are excepted from the requirement contained in subparagraph (E) of paragraph (3) of subdivision (b) of Section 139.2 (see subparas. (C) and (G), para. (3), subd. (b), Sec. 139.2).

Corp. v. Board of Dental Examiners (1977) 68 Cal.App-3d 253, 260), unless it is clearly erroneous or unauthorized (Rivera v. City of Fresno (1971) 6 Cal.3d 132, 140). In accordance with these principles, we do not find the regulations adopted by the IMC relating to specialties to be erroneous or unauthorized.

As indicated above, subdivision (a) of Section 139.2 requires the IMC to "appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues." Sections 11, 12, and 13 of Title 8 of the California Code of Regulations implement this requirement. Although the term "specialties," as used in Section 139.2, is not defined in statute or regulation, it is a general rule of statutory construction that statutory terms should be construed in accordance with the usual, ordinary import of the language employed (IT Corp. v. Solano County Bd. of Supervisors (1991) 1 Cal.4th 81, 98). "Specialty" means "something in which one specializes or of which one has special knowledge as ... a branch of knowledge, science, art or business to which one devotes oneself whether as an avocation or a profession and usu. [usually] to the partial or total exclusion of related matters" (Webster's Third New International Dictionary (1986), at pp. 2186-2187). Thus, subdivision (a) of Section 139.2 requires in our opinion that the IMC recognize the specialties of all "physicians" listed in Section 3209.3 as needed to evaluate medical issues for workers' compensation cases.

Subdivision (b) of Section 139.2 requires that "physicians," which includes practitioners of chiropractic, be licensed. The only restriction on the IMC in the assignment of a QME is that the scope of practice of the QME's license not be exceeded. In this regard, Section 7 of the Chiropractic Act, an initiative statute adopted by the voters on November 7, 1922, to regulate the practice of chiropractic, reads as follows:

"§7. One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in material medica."

Thus, Section 7 of the Chiropractic Act authorizes holders of the license issued thereunder to "practice chiropractic," but does not define or describe "chiropractic." In People v. Fowler (1938) 32 Cal.App.2d (Supp.) 737 (hereafter Fowler) the court at page 745, stated that Section 7 provides for authorization in two parts, "1st, 'practice chiropractic ... as taught in chiropractic schools or colleges,' and 2d, 'to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body.'" As to the first part of the authorization, the court stated that the courts in this state have concluded that "chiropractic" means all of the following:

"A system of therapeutic treatment for various diseases, through the adjusting of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension upon nerve filaments. The operations are performed with the hands, no drugs being administered A system of manipulation which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation." (Fowler, supra, at p. 746.)

As to the second part of the authorization, the court found it not to be "a definition, but an addition to, chiropractic as used in the previous part of section 7 and authorizes chiropractors to use measures which would not otherwise be within the scope of their licenses" (Fowler, supra, at p. 747). The court further concluded that "the chiropractor is limited to the practice of chiropractic and the use of mechanical, hygienic and sanitary measures incident to the care of the body, which do not invade the field of medicine and surgery, irrespective of whether or not additional phases of the healing art, including medicine and surgery or the use of drugs, may have been taught in chiropractic schools or colleges" (Fowler, supra, at p. 748).

As to the titles to be used by licensed chiropractor practitioners, Section 15 of the Chiropractic Act specifies the titles, prefixes, and suffixes which may and may not be used, and reads as follows:

"§15. Illegal Practice of Chiropractic—Use of Title Indicating Practice of Profession—Penalty

"Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title 'chiropractor' or 'D.C.' or any word or title to induce, or tending to induce belief

that he or she is engaged in the practice of chiropractic, without first complying with the provisions of this act; or any licensee under this act who uses the word 'doctor' or the prefix 'Dr.' without the word 'chiropractor,' or 'D.C.' immediately following his or her name, or the use of the letters 'M.D.' or the words 'doctor of medicine,' or the term 'surgeon,' or the term 'physician,' or the word 'osteopath,' or the letters 'D.O.' or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he or she held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) and not more than seven hundred fifty dollars (\$750), or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment."

Thus, in recognizing physician specialties for chiropractors, both Section 7 of the Chiropractic Act and subdivision (a) of Section 3209.3 prohibit the IMC from permitting a chiropractor to practice outside the scope of his or her license. In this regard, we have been informed by a council member of the IMC that the specialty codes adopted by the IMC in Section 10.1 of Title 8 of the California Code of Regulations for chiropractors are those of the chiropractic diplomate boards and do not expand the scope of the license for chiropractic practitioners. Further, the specialty codes do not authorize a licensed chiropractic practitioner to use with his or her name any titles, letters, prefixes, or suffixes in violation of Section 15 of the Chiropractic Act. The specialty codes adopted by the IMC are only for identifying chiropractic specialties recognized by chiropractic diplomate boards for the QME application forms and the "Request for Qualified Medical Evaluator Forms" (see 8 Cal. Code Regs. 10.1, 10.1A and 30.1) that the IMC, pursuant to its authority under subdivision (a) of Section 139.2, has determined to be needed for the evaluation of medical issues in workers' compensation cases. Therefore, based on the above, the Industrial Medical Council has not acted erroneously or without authorization in adopting the specialty codes for chiropractors.

Accordingly, we conclude that the Industrial Medical Council may, pursuant to Section 139.2 of the Labor Code, appoint

Honorable Martin Gallegos - p. 9 - #24401

doctors of chiropractic as qualified medical evaluators in their respective chiropractic specialties.

Very truly yours,

Bion M. Gregory
Legislative Counsel

A handwritten signature in cursive script, appearing to read "Edward Ned Cohen".

By
Edward Ned Cohen
Deputy Legislative Counsel

NC:sjm

GOVERNMENT RELATIONS COUNSEL

January 14, 2008

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BY ELECTRONIC MAIL

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Re: Comments on Sections 12 & 13 of DWC's
Proposed QME Regulations

Dear Ms. Gray:

Thank you for the opportunity to comment on the proposed regulations setting forth the conditions for the Administrative Director to recognize specialty designations of a QME as proposed by the Division of Workers' Compensation ("DWC").

The comments provided in this letter are offered on behalf of the California Chiropractic Association ("CCA"). It is the position of CCA that DWC lacks authority to promulgate the regulation as proposed.

Background

The Department of Industrial Relations, Division of Workers' Compensation ("DWC"), proposes amendments to Title 8, Division 1, Article 2, Sections 12 and 13 to preclude a physician, as defined in Labor Code Section 3209.3, from being listed as a QME in a particular specialty area unless the physician's licensing board recognizes the board that conferred the specialty designation on the physician. To wit, the amendments provide that the "Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians." In its Initial Statement of Reasons in support of the proposed amendments, DWC maintains that this change is necessary "to make the criteria for being listed as a QME in a particular specialty transparent and consistent with the jurisdiction exercised by the respective California physician licensing boards."

Issue

Does the DWC have authority to adopt a regulation to preclude a physician, as defined in Labor Code Section 3209.3, from being listed as a QME in a particular specialty area unless the physician's licensing board recognizes the board that conferred the specialty designation on the physician?

Conclusion

No. While the proposed amendment may be consistent with the jurisdiction exercised by the licensing boards for medical doctors and other health care practitioners, it is not consistent with the jurisdiction exercised by the Board of Chiropractic Examiners ("BCE") for doctors of chiropractic.

California Business and Professions Code Section 651(h)(5)(A) pointedly authorizes licensed health care professionals, including doctors of chiropractic, to advertise specialty designations. (All statutory references herein are to the California Business and Professions Code, unless otherwise stated.) In fact, the statute imposes no qualifications or restrictions on a doctor of chiropractic's authority to so advertise, unlike the way the statute operates with respect to other health care professionals such as medical doctors, optometrists, dentists, and podiatrists whose ability to use designations is circumscribed by special statutory restrictions.

The BCE does not have authority to limit on a categorical basis which boards the BCE will recognize. The BCE has no authority to restrict the use of specialty designations. Any effort to do so would be inconsistent with the statutory provisions which do not impose any restrictions on the use of designations pertinent to doctors of chiropractic. The BCE has no authority to enlarge or restrict the statutes. Rather, it is the province of the Legislature to govern the use of specialty designations.

Moreover, a doctor of chiropractic's right to advertise specialty designations is constitutionally protected commercial speech. Even the Legislature, much less the DWC, could not restrict the use of specialty designations unless it shows a substantial state interest lest it would violate the United States Constitution.

To be sure, the BCE itself does not restrict a chiropractor's use of specialty designations by policy in any way. Still, the BCE may pursue an enforcement action to restrict the use of a particular designation that the BCE deems actually misleading as applied in a specific case, but such an action must comport with the constitutional protections and the statutory authority. However, even the BCE itself has no authority to restrict the use of a particular designation unless the BCE provides a strong evidentiary case that the use of the particular designation is misleading to the public.

It follows that DWC does not have the authority to impose a condition which the BCE itself cannot impose. The proposed regulation thus fails for lack of authority.

Discussion

I. Doctors of chiropractic are authorized under California law to advertise specialty designations without conditions.

Section 651(h)(5)(A) authorizes doctors of chiropractic to advertise specialty designations. Section 651 governs permissible advertising by health care professionals licensed under Division 2 of the Healing Arts or "under any initiative act referred to in this division." Section 651(a). Doctors of chiropractic are authorized under the Act referred to in the division and under Division 2 of the Healing Arts, Chapter 2.

Section 651(h)(5)(A) provides authority for doctors of chiropractic to advertise specialty designations, as follows:

"(h) Advertising by any person so licensed may include the following: . . .

(5) (A) *A statement that the practitioner is certified by a private or a public board or agency or a statement that the practitioner limits his or her practice to specific fields.*" (emphasis added.)

The authority for doctors of chiropractic to advertise designations is not conditional. By contrast, the authority for dentists, optometrists, medical doctors, and podiatrists is conditioned to varying degrees on whether the practitioner's licensing board recognizes the private or public board or agency that has conferred the certification. See Section 651(h)(5)(A)(i-iii) for dentists; Section 651(h)(5)(A)(iv) for optometrists; Section 651(h)(5)(B) for physicians and surgeons; and 651(h)(5)(C) for podiatrists.

II. The BCE, much less the DWC, has no authority to adopt a regulation that restricts the use of designations.

Any effort on behalf of the DWC to adopt a regulation to restrict the use of designations would be inconsistent with the governing statutory provisions which do not impose any restrictions on the use of designations pertinent to doctors of chiropractic.

As explained above, Section 651 authorizes doctors of chiropractic to advertise designations without conditions whereas the Legislature elected to impose conditions on the authority for other certain practitioners. The difference in treatment in the statute between doctors of chiropractic and the specified practitioners is strong evidence of legislative intent to authorize doctors of chiropractic to use designations without further restrictions by its licensing board, the BCE, much less by any other state agency that lacks jurisdiction to regulate chiropractors in the first place. Just as with the other practitioners, it is the Legislature's prerogative with respect to doctors of chiropractic to decide whether to impose conditions on the use of designations.

The BCE has no authority to enlarge or restrict the statutes. *Crees v. California State Board of Medical Examiners*, 213 Cal.App.2d 195 (1963) stood, in part, for this proposition when it affirmed the trial court judgment that an earlier version of BCE's 16 CCR 302 regulation was "invalid insofar as it purported to alter or enlarge the scope of practice of practice of chiropractors under the Chiropractic Act." *Crees* at 209-210 citing *People v. Mangiagli*, 97 Cal.App.2d.Supp. 935, at 943 "An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative [or initiative] enactment" and *Duskin v. State Board of Dry Cleaners*, 58 Cal.2d 155, at 165 "Thus the regulation, . . . insofar as it attempted to enlarge the terms of the enabling statute, . . . is invalid." Rather, it is the Legislature's province to alter the statute.

A parallel case, *College of Psychological and Social Studies v. Board of Behavioral Science Examiners*, 41 Cal.App.3d 367 (1974), is instructive in this regard. The court of appeal, second appellate district, found invalid a board of behavioral science regulation which prevented marriage and family counselors from advertising licenses obtained from unaccredited educational institutions. The court held that the regulation impermissibly expanded California's false advertising law, Section 17500, beyond the terms of the statute. "The cases dealing with section 17500 have dealt with what is improper advertising. Under Section 17500 a board is powerless to prohibit or restrict advertising which is not untrue or misleading. (*Cozad v. Chiropractic Board of Examiners*, (1957) 153 Cal.App.2d 249, 255 . . .". *College of Psychological and Social Studies* at 373.

The court framed the question as whether the regulation was an invalid attempt to prohibit advertising that is not misleading or a valid attempt to prevent statements that are misleading. *College of Psychological and Social Studies* at 373. The court found that the former was the case as "none of the Attorney General's opinions cited by the board tend to show that the granting of a Ph.D. from an unaccredited school to persons who are licensed and who have Master's degrees from accredited schools is misleading as defined in the statutes." *Id.* at 374. The court concluded that "the board may not restrict advertising which does not violate existing code sections. The Legislature is free to deal with unaccredited schools, but the administrative board may not enlarge on legislative efforts in that area." *Id.* at 374.

In the same vein, the BCE, much less the DWC, may not enlarge on the legislative efforts to set the standards for the use of designations by health care practitioners. The BCE, and certainly the DWC, may not restrict the right of a doctor of chiropractic to advertise designations which do not violate Section 651. Rather, the Legislature is free to deal with the issue.

III. Even the Legislature cannot restrict the use of specialty designations absent a substantial state interest lest it would violate the Constitution.

A doctor of chiropractic's right to advertise specialty designations is constitutionally protected commercial speech. While a state may "prohibit commercial speech that is false, deceptive, or misleading" as California has done, where speech is not deceptive, the "state may restrict it 'only if the state shows that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest.'" *Ibanez v. Fla. Dep't of Bus. & Prof'l Regulation, Bd. Of Accountancy*, 512 U.S. 136, 142 (1994) citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980)." *Michael Potts, D.D.S. and the American Academy of Implant Dentistry, v. Kathleen Hamilton, Director, California Department of Consumer Affairs, et. al.*, 334 F.Supp. 2d 1206, 1212 (2004).

If an advertisement is inherently misleading or actually misleading in practice it is not protected by the First Amendment and may be banned. *Potts* at 1212. If an advertisement is only potentially misleading, and could be modified as with a disclaimer, then it is protected by the First Amendment and may not be banned. *Potts* at 1212-13. "The determination as to whether an advertisement or credential is inherently or potentially misleading is necessarily fact intensive and case-specific." *Potts* at 1213 citing *Peel v. Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 101-102 (1990).

A. Designations under 651(h)(5)(A) have not been held "inherently misleading" and are unlikely to be held so as against doctors of chiropractic.

Potts held that designations like "fellow" and "diplomate" were not inherently misleading as to dentists and therefore found unconstitutional the restrictions in 651(h)(5)(A) that required dentists to take an advanced education program before they could advertise such credentials. This ruling stands in contrast to the court in *American Academy of Pain Management v. Ronald Joseph, Executive Director of the Medical Board of California*, 353 F.3d 1099 (2004) where the court held that an advertisement by a medical doctor using the term "board certified" with respect to a credential not conferred by the American Board of Medical Specialties is inherently misleading because the public associates the term with certification by a member of ABMS in one of the 23 areas of medical specialization recognized by ABMS. *Pain Management* at 1104-1105. *Potts* distinguished the circumstances pertinent to the dentists by pointing out that dental specialty credentials, or even terms such as "diplomate" or "specialist," do not connote certification by a member of the American Dental Association in an ADA-recognized dental specialty. *Potts* at 1215.

Along the same lines as dentists, specialty credentials for doctors of chiropractic do not have a fixed meaning within the minds of the public and terms such as "diplomate" and "board-certified" do not connote certification by a member of the American Chiropractic Association in an ACA-recognized chiropractic specialty. Thus specialty designations for doctors of chiropractic are not seen to be inherently misleading.

Designations such as "diplomate," "specialist," and "board-certified" do not suggest that doctors of chiropractic are licensed by the state to practice another profession, especially because as to doctors of chiropractic those designations are typically further specified to be "chiropractic" in nature. The acronyms for doctors of chiropractic are not similar to the acronyms for the other professions so the use of specialty designations by doctors of chiropractic does not mislead.

To be sure, the BCE can take enforcement action against a doctor of chiropractic for the use of a particular designation that the DWC deems actually misleading as applied in a specific case. The BCE has adopted regulations to establish penalties for deceptive advertising (16 CCR 311) and for false advertising (16 CCR 317(p)) so it has these tools at its disposal for this purpose.

But those regulations do not set the standards for what is considered misleading – they just set the penalties for the use of misleading statements. 16 CCR 311 has been upheld on this basis as not enlarging the Act: "Actually, rule 311 specifies the disciplinary penalties to be imposed by respondent board upon chiropractors for advertising misstatements, falsehoods, misrepresentations, (all of which are untrue) or distorted, sensational or fabulous statements, or any statements intended to or having a tendency to deceive the public or impose upon credulous or ignorant persons (all of which are misleading). The respondent board, in enacting rule 311 was performing its duty to enforce the Chiropractic Act and 'to promote the spirit and purpose' thereof." *Cozad v. Board of Chiropractic Examiners*, 153 Cal.App.2d 249, 256 (1957).

However, the BCE has no authority to restrict the use of a particular designation unless the BCE provides a strong evidentiary case that the use of the particular designation is misleading to the public. To wit, "respondent board is powerless to prohibit or restrict advertising which is not untrue or misleading." *Cozad* at 255.

IV. The effect of the proposed regulation is to exclude doctors of chiropractic from serving as QMEs, which the DWC has no authority to do.

The DWC has no authority to impose conditions on doctors of chiropractic that would effectively preclude them from serving as QMEs. The authority to establish the conditions for eligibility rests with the Legislature. As Section 11 provides, the "Administrative Director shall appoint as QMEs all applicants who meet the requirements set forth in Labor Code Section 139.2(b)." The DWC's role is to implement the legislative intent, which clearly contemplates doctors of chiropractic serving as QMEs.

By imposing a condition precedent that is legally impossible for doctors of chiropractic to satisfy, the DWC is prohibiting doctors of chiropractic from serving as QMEs. In so doing, the DWC is flouting the legislative intent and is usurping the legislative prerogative to determine which health care practitioners can serve as QMEs.

Conclusion

For the foregoing reasons, the DWC does not have the authority to adopt a regulation to preclude a doctor of chiropractic from serving as a QME unless the BCE recognizes the board that conferred the specialty designation.

However, there is another way to craft the language that would at the same time relieve DWC from making determinations about the validity of specialty boards and be consistent with the jurisdiction of the respective licensing boards. Section 12 (and Section 13 with conforming changes) could be revised as follows:

“The Administrative Director shall recognize all specialty boards either accredited or considered equivalent to ABMS-recognized boards by the Medical Board, the Osteopathic Medical Board and the Board of Psychology of the State of California. The Administrative Director shall recognize chiropractic diplomate boards unless specifically rejected by the Board of Chiropractic Examiners.”

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Attorney for Petitioners

CALIFORNIA BOARD OF CHIROPRACTIC EXAMINERS

LAWRENCE TAIN, DC;)	
STEPHANIE HIGASHI, DC;)	
ERIC SPRATT, DC; LORI)	
PRESCOTT, DC;)	
GAYLE WALSH, DC. and)	
ALEXIS M. RAMER, PhD.)	
)	
Petitioners.)	

SUBMITTED IN SUPPORT OF
PETITION FILED PURSUANT
TO GOVERNMENT CODE
§§ 11340.6 & 11340.6; PETITION
FILED ON OR ABOUT 4-2-07
BY PETITIONERS

SPECIFIC SCOPE OF PRACTICE RULE

PROPOSED and REQUESTED

by

PETITIONERS

Petitioners propose the following chiropractic scope of practice rule and specifically hereby request that the State Board of Chiropractic Examiners repeal the present section 302 of Title 16 of the California Code of Regulation and adopt in its place the following:

§ 302 Scope of Chiropractic Practice.

- (1) Except as otherwise hereafter provided by amendment to California Code of Regulations, Title 16, section 331.12.2(d), or by other duly adopted regulation establishing standards to perform particular forms of practice otherwise within the hereafter stated scope of practice, a duly licensed chiropractor is authorized to diagnose and treat diseases, injuries, deformities or other physical or mental conditions except by the use of any drug or medicine in materia medica in 1922 and thereafter, or by the performance of surgery.
- (2) The limitations on the scope of chiropractic practice stated in the chiropractic act as amended, including the limitation related to the "use of any drug or medicine now or hereafter included in materia medica", did not in 1922, and do not now, preclude chiropractors from using, dispensing, administering, ordering or prescribing for the diagnosis and treatment of diseases, injuries, deformities, or other physical or mental conditions, any of the following:

Food, including extracts of food, nutraceuticals, vitamins, amino acids, minerals, and enzymes; homeopathic medicines; botanicals and their extracts, botanical medicines; other substances derived from botanical, mineral or animal sources or whose molecular structure is the same as found in nature; air, water, clay, heat, sound, light, electricity, energy, therapeutic exercise, suggestive therapeutics, and rest; and joint and/or soft tissue massage, manipulation and/or adjustment for biomechanical, physiological, reflex or other therapeutic purposes.

- (3) In 1922 the term surgery meant, and it still means, the severing of human tissue with a knife or equivalent cutting device, and did not, and does not, include, or prevent chiropractors from: a) puncturing or penetrating human tissues with needles or other instruments for imaging or other diagnostic purposes, or b) utilizing needles or other instruments for the transdermal, intradermal, subcutaneous, intravenous, intramuscular, oral, nasal, auricular, ocular, rectal, vaginal delivery or administration of those substances and treatment forms, methods, means and instrumentalities referred to in paragraph (2) hereof.
- (4) A chiropractor may not hold himself or herself out as being licensed to practice anything other than as a chiropractor and may not hold himself or herself out as practicing under any other healing arts license, including medicine, osteopathy, dentistry, optometry, physical therapy, naturopathy, or acupuncture, unless he or she holds another, separate license authorizing such practice.

Board of Chiropractic Examiners

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**NOTICE OF PUBLIC MEETING****SCOPE OF PRACTICE COMMITTEE**

July 17, 2008
10:00 a.m.
State Capitol
Assembly Room 126
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

- May 7, 2008

Public Comment**Discussion and Possible Action**

- Recognition of Chiropractic Specialties

Discussion and Possible Action

- Update on Scope of Radiography in the Chiropractic Practice

Discussion and Possible Action

- Issues Raised in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt Scope of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Public Comment**Future Agenda Items****ADJOURNMENT****SCOPE OF PRACTICE COMMITTEE**

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

The meeting is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****SCOPE OF PRACTICE COMMITTEE**

July 17, 2008

10:00 a.m.

State Capitol

Assembly Room 126
Sacramento, CA 95814

AGENDA**CALL TO ORDER****Approval of Minutes**

- May 7, 2008

Public Comment**Discussion and Possible Action**

- Recognition of Chiropractic Specialties

Discussion and Possible Action

- Update on Scope of Radiography in the Chiropractic Practice

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
SCOPE OF PRACTICE COMMITTEE
May 7, 2008
2525 Natomas Park Drive, Ste. 120
Sacramento, CA 95833**

Committee Members Present

Hugh Lubkin, D.C., Chair
Frederick Lerner, D.C.

Staff Present

Brian Stiger, Executive Officer
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lubkin called the meeting to order at 9:35 a.m.

Roll Call

Dr. Lerner called the roll. All committee members were present.

Approval of the March 27, 2008, Minutes

MOTION: DR. LERNER MOVED TO APPROVE THE MINUTES.

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 2-0

MOTION CARRIED

Recognition of Chiropractic Specialties

Dr. Lubkin commented that the subject of chiropractic specialties has surfaced due to the Department of Industrial Relations, Division of Workers' Compensation proposed regulations to eliminate chiropractic specialties from QME designations.

MOTION: DR. LUBKIN MOVED TO INSTRUCT STAFF TO REVIEW VARIOUS ENTITIES THAT PROVIDE CHIROPRACTIC SPECIALTIES AND HAVE THE LIST AVAILABLE FOR THE MAY 22, 2008 BOARD MEETING.

SECOND: DR. LERNER SECONDED THE MOTION

Dr. Charles Davis, ICAC, spoke in support of the motion and thanked the Board for considering ICAC's proposal regarding chiropractic specialties.

Dr. Lerner emphasized that the Board needs to make very clear to the public and licensees that the Board does not certify, license, or supervise chiropractic specialties.

Dr. Lerner suggested that DCA legal counsel research the advertising aspects of chiropractic specialties in light of a legal opinion prepared by Patrick Shannon and submitted to the Board.

Mr. Stiger stated that the Board staff will need to conduct a comprehensive review of this subject which will include legal review and ultimately require a regulation package.

Kristine Schultz, California Chiropractic Association, spoke in support of recognizing chiropractic specialties and provided suggested language.

David Prescott suggested that the Board follow one of two models, the State Bar and the medical model. Mr. Prescott stated the medical model is more appropriate. Mr. Prescott provided his historical perspective regarding the chiropractic scope of practice.

AMENDED MOTION: DR. LUBKIN MOVED THAT THE STAFF MOVE FORWARD TO PROVIDE INFORMATION TO THE FULL BOARD TO RECOGNIZE CHIROPRACTIC SPECIALTIES.

SECOND: DR. LERNER SECONDED THE MOTION

VOTE: 2-0

MOTION CARRIED

MOTION: DR. LERNER MOVED THAT IF THE FULL BOARD DECIDES TO BEGIN THE PROCESS OF RECOGNIZING CHIROPRACTIC SPECIALTIES, THE BOARD SHOULD SEND A LETTER TO DWC INFORMING THEM OF THIS DECISION.

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE 2-0

MOTION CARRIED.

Update on Meeting with California Department of Public Health Radiologic Health Branch

Mr. Stiger stated that after speaking with various staff at the Department of Public Health Radiologic Health Branch, it became clear that the issue of a chiropractic doctor taking x-rays of non-chiropractic patients needs to be addressed by this Board. Mr. Stiger recommended that the Board wait for the legal opinion before making a decision.

Dr. Lubkin asked the Chiropractic Colleges and professional associations to provide input to assist the Board make a decision.

Dr. Lerner stated he supports chiropractors taking x-rays of non-chiropractic patients in a emergency situation to protect the public.

Kristine Schultz, California Chiropractic Association, spoke in support of chiropractors taking x-rays of non-chiropractic patients and she submitted proposed regulatory language.

The committee decided to table this issue until staff completes its analysis of this issue.

Issues Raised in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt Scope of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Dr. Lubkin asked Mr. Prescott to present a summary of the information he has compiled and to address how his petition enhances public protection for the consumers of chiropractic in California. Additionally, Dr. Lubkin asked if this petition changes the way chiropractors practice in California.

Dr. Lerner stated that, in his opinion, this subject is the most important issue facing this Board because it goes back to understanding what the scope of practice was in 1922 and determining if the Board has the authority to change the scope of practice.

Mr. Prescott explained that he brought this petition forward on behalf of four chiropractors and one individual patient. Mr. Prescott stated that chiropractors as defined in the 1922 Initiative Act were entitled to treat and diagnosis diseases, injuries, deformities, or other physical or mental conditions. He continued this language comes from the 1913 Medical Practice Act.

Mr. Prescott then presented a historical perspective of the basis for his petition. Mr. Prescott stated that he has evidence to prove that half of the original ballot measure that the voters approved in 1922 is not included in the current Initiative Act.

Dr. Lubkin asked Mr. Prescott how does the Board authenticate the evidence he has presented and how does the chiropractic profession catch up after 86 years.

Mr. Prescott stated that the Board could send someone to the Los Angeles County Law Library and retrieve the same information. Mr. Prescott recommended that the Board set minimum standards for the electives to cover the subjects authorized in the original ballot measure.

Dr. Lubkin suggested that a list of questions be formulated and presented to Mr. Prescott. Mr. Prescott stated he is not prepared to answer these questions. He stated pursuant to the Government Code the Board needs to either reject the petition or schedule a public hearing on the petition before the full Board.

Dr. Lubkin commented that this matter may need to be settled by the courts.

Mr. Prescott suggested that this issue be scheduled for a public hearing so other attorneys can argue different positions.

DR. LERNER MOVED THAT THIS ISSUE BE PLACED IN ANOTHER SCOPE OF PRACTICE COMMITTEE MEETING.

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 2 - 0

MOTION CARRIED

Future Agenda Items

Dr. Lerner suggested that the X-rays and chiropractic specialties be placed on a future agenda.

ADJORNMENT

Dr. Lubkin adjourned the meeting at 11:45 p.m.

DRAFT

Amendments to Constitution

and

Proposed Statutes

with

Arguments Respecting the Same

*To be Submitted to the Electors of the State of California
at the General Election on*

Tuesday, November 7, 1922

*Index, ballot titles with numbers, and certificate appear in last pages
Proposed changes in provisions are printed in black-faced type
Provisions proposed to be repealed are printed in italics*

Compiled by
LEGISLATIVE COUNSEL BUREAU
and distributed by
SECRETARY OF STATE

CALIFORNIA STATE PRINTING OFFICE
SACRAMENTO, 1922.

CHIROPRACTIC. Initiative Act. Creates Board of Chiropractic Examiners, appointed by Governor and paid from receipts under act; prescribes powers and duties thereof; prohibits practice of chiropractic without license therefrom, authorizing issuance thereof to certain chiropractic graduates and establishing prerequisites of study and other conditions to such issuance; provides for revocation of such licenses; declares chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to public health, shall sign death certificates and make reports as required by law; prescribes penalties and repeals conflicting legislation.

YES

NO

Sufficient qualified electors of the State of California present to the secretary of state this petition and request that a proposed measure, as hereinafter set forth, be submitted to the people of the State of California for their approval or rejection, at the next ensuing general election. The proposed measure is as follows:

PROPOSED LAW.

(Proposed changes from provisions of present laws are printed in black-faced type.)

An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the state board of chiropractic examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith.

The people of the State of California do enact as follows:

Section 1. A board is hereby created to be known as the "state board of chiropractic examiners," hereinafter referred to as the board, which shall consist of five members, citizens of the State of California, appointed by the governor. Each member must have pursued a resident course in a regularly incorporated chiropractic school or college, and must be a graduate thereof and hold a diploma therefrom. Each member of the board first appointed hereunder shall have practiced chiropractic in the State of California for a period of three years next preceding the date upon which this act takes effect, thereafter appointees shall be licentiates hereunder. No two persons shall serve simultaneously as members of said board, whose first diplomas were issued by the same school or college of chiropractic, nor shall more than two members be residents of any one county of the state. And no person connected with any chiropractic school or college shall be eligible to appointment as a member of the board. Each member of the board, except the secretary, shall receive a per diem of ten dollars for each day during which he is actually engaged in the discharge of his duties, together with his actual and necessary traveling expenses incurred in connection with the performance of the duties of his office, such per diem traveling expenses and other incidental expenses of the board or of its members to be paid out of the funds of the board hereinafter defined and not from the state's taxes.

Sec. 2. Within sixty days of the date upon which this act takes effect, the governor shall appoint the members of the board. Of the members first appointed, one shall be appointed for a term of one year, two for two years, and two for three years. Thereafter, each appointment shall be for the term of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. Each member shall serve until his successor has been appointed and qualified. The governor may remove a member from the board after receiving sufficient proof of the inability or misconduct of said member.

Sec. 3. The board shall convene within thirty days after the appointment of its members, and

shall organize by the election of a president, vice-president and secretary, all to be chosen from the members of the board. Thereafter elections of officers shall occur annually at the January meeting of the board. A majority of the board shall constitute a quorum.

It shall require the affirmative vote of three members of said board to carry any motion or resolution, to adopt any rule, or to authorize the issuance of any license provided for in this act. The secretary shall receive a salary to be fixed by the board in an amount not exceeding one thousand dollars per annum, but not per diem, together with his actual and necessary traveling expenses incurred in connection with the performance of the duties of his office, and shall give bond to the state in such sum with such sureties as the board may deem proper. He shall keep a record of the proceedings of the board, which shall at all times during business hours be open to the public for inspection. He shall keep a true and accurate account of all funds received and of all expenditures incurred or authorized by the board, and on the first day of December of each year he shall file with the governor a report of all receipts and disbursements and of the proceedings of the board for the preceding fiscal year.

Sec. 4. The board shall have power:

(a) To adopt a seal, which shall be affixed to all licenses issued by the board.

(b) To adopt from time to time such rules and regulations as the board may deem proper and necessary for the performance of its work, copies of such rules and regulations to be filed with the secretary of state for public inspection.

(c) To examine applicants and to issue and revoke licenses to practice chiropractic, as herein provided.

(d) To summon witnesses and to take testimony as to matters pertaining to its duties; and each member shall have power to administer oaths and take affidavits.

(e) To do any and all things necessary or incidental to the exercise of the powers and duties herein granted or imposed.

Sec. 5. It shall be unlawful for any person to practice chiropractic in this state without a license so to do. Any person wishing to practice chiropractic in this state shall make application to the board fifteen days prior to any meeting thereof, upon such form and in such manner as may be provided by the board. Each application must be accompanied by a license fee of twenty-five dollars and a certificate showing good moral character of the applicant. Except in the cases herein otherwise prescribed, each applicant shall be a graduate of an incorporated chiropractic school or college which teaches a course of not less than two thousand four hundred hours, extended over a period of three school terms of at least six months each, and must give satisfactory proof of having attended not less than ninety per cent of said two thousand four hundred hours, and shall present to the board at the time of making such application, a diploma from a high school, or proof, satisfactory to the board of education equivalent in training power to a high school course.

The schedule of minimum educational requirements to enable any person to practice chiro-

practic in this state is as follows, to wit, except as herein otherwise provided:

Anatomy	600 hours
Histology	100 hours
Elementary chemistry and toxicology	100 hours
Physiology	200 hours
Bacteriology	100 hours
Hygiene and sanitation	100 hours
Pathology	200 hours
Diagnosis or analysis	400 hours
Chiropractic theory and practice	500 hours
Obstetrics and gynecology	100 hours

Total 2400 hours

Sec. 6. (a) The board shall meet as a board of examiners on the first Tuesday following the second Monday of January and July of each year, and at such other times and places as may be found necessary for the performance of their duties. The office of the board shall be in the city of Sacramento. Sub-offices may be established in Los Angeles and San Francisco, and such records as may be necessary may be transferred temporarily to such sub-offices. Legal proceedings against the board may be instituted in any one of said three cities.

(b) Each applicant shall be designated by a number instead of the name, so that the identity will not be disclosed to the examiners until the papers are graded.

(c) All examinations shall be in writing, except in cases herein otherwise prescribed, and shall be practical in character, as taught in chiropractic schools or colleges, and designed to ascertain the fitness of the applicant to practice chiropractic. Said examinations shall be in each of the subjects as set forth in section five hereof. A license shall be granted to any applicant who shall make a general average of seventy-five per cent, and not fall below sixty per cent in more than two subjects or branches of said examination. Any applicant failing to make the required grade shall be given credit for the branches passed, and may, without further cost, take the examination at the next regular examination on the subjects in which he failed. For each year of actual practice since graduation the applicant shall be given a credit of one per cent on the general average.

Sec. 7. One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

Sec. 8. Any person who shall have practiced chiropractic for two years after graduation from a chiropractic school or college, one year of which shall have been in this state preceding the date upon which this act takes effect, or any person who graduated from a chiropractic school or college prior to January 1, 1922, and who shall present to the board satisfactory proof of good moral character and having pursued a resident course of not less than two thousand hours in a legally incorporated chiropractic school or college, shall be given a practical and clinical examination in chiropractic philosophy and practice, and if he, or she, make a grade of seventy-five per cent in such examination, the board shall grant a license to said applicant to practice chiropractic in this state under the provisions of this act; provided, however, that application for said license is made within six months of the date upon which this act takes effect and that each applicant shall pay to the secretary of the board the sum of twenty-five dollars.

Sec. 9. Notwithstanding any provision contained in any other section of this act the board, upon receipt of the fee of twenty-five dollars, shall issue a license to any of the following named persons:

(a) To each member of the board.

(b) To any person licensed to practice chiropractic under the laws of another state, having the same general requirements as prescribed in this act; and provided, further, that such other state in like manner grants reciprocal registration to chiropractic practitioners of this state.

Sec. 10. (a) The board shall refuse to grant, or may revoke, a license to practice chiropractic in this state, or may cause a licensee's name to be removed from all records of licensed practitioners of chiropractic in this state, upon any of the following grounds, to wit:

The employment of fraud or deception in applying for a license or in passing an examination as provided in this act; the practice of chiropractic under a false or assumed name; or the personation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him for the performance of his professional duties; the advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed; or the advertising, directly, indirectly or in substance, upon any card, sign, newspaper advertisement, or other written or printed sign or advertisement, that the holder of such license or any other person, company or association by which he or she is employed, or in whose service he or she is, will treat, cure, or attempt to treat or cure, any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, for lost manhood, sexual weakness or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of any person, company or association so advertising. Any person who is licentiate, or who is an applicant for a license to practice chiropractic, against whom any of the foregoing grounds for revoking or refusing a license is presented to the board with a view of having the board revoke or refuse to grant a license, shall be furnished with a copy of the complaint, and shall have a hearing before the board in person or by an attorney, and witnesses may be examined by the board respecting the guilt or innocence of the accused. The secretary on all cases of revocation shall enter on his register the fact of such revocation, and shall certify the fact of such revocation under the seal of the board to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person the following:

"This certificate was revoked on the _____ day of _____, 19____," giving the day, month and year of such revocation in accordance with said certification to him by said secretary. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all proceedings of said board in the matter of said revocation.

(b) At any time after two years following the revocation or cancellation of a license or registration under this section, the board may, by a majority vote, reissue said license to the person affected, restoring him to, or conferring on him all the rights and privileges granted by his original license or certificate. Any person to whom such rights have been restored shall pay to the secretary the sum of twenty-five dollars upon the issuance of a new license.

Sec. 11. (a) Every person who shall receive a license from the board shall have it recorded in the office of the county clerk of the county in which he resides, and shall have it likewise recorded in the counties into which he shall subsequently move for the purpose of practicing chiropractic.

(b) The failure or the refusal on the part of the holder of a license to have it recorded before he shall begin to practice chiropractic in this state, after having been notified by the board to do so, shall be sufficient ground to revoke or cancel a license and to render it null and void.

(c) The county clerk of each county in this state shall keep for public inspection, in a book provided for that purpose, a complete list and

description of the licenses recorded by him. When any such license shall be presented to him for record he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record.

Sec. 12. Each person practicing chiropractic within this state shall, on or before the first day of January of each year, after a license is issued to him as herein provided, pay to said board of chiropractic examiners a renewal fee of two dollars. The secretary shall, on or before November first of each year, mail to all licensed chiropractors in this state a notice that the renewal fee will be due on or before the first day of January next following. Nothing in this act shall be construed to require the receipts to be recorded in like manner as original licenses. The failure, neglect or refusal of any person holding a license or certificate to practice under this act in the State of California to pay said annual fee of two dollars during the time his or her license remains in force shall, after a period of sixty days from the first day of January of each year, ipso facto, work a forfeiture of his or her license or certificate, and it shall not be restored except upon the written application therefor and the payment to the said board of a fee of ten dollars, except that such licensee who fails, refuses or neglects to pay such annual tax within a period of sixty days after the first day of January of each year shall not be required to submit to an examination for the reissuance of such certificate.

Sec. 13. Chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to the public health, and shall sign death certificates and make reports as required by law to the proper authorities, and such reports shall be accepted by the officers of the departments to which the same are made.

Sec. 14. All moneys received by the board under this act shall be paid to the secretary of said board, who shall give a receipt for the same and shall at the end of each month report to the state controller the total amount of money received by him on behalf of said board from all sources, and shall at the same time deposit with the state treasurer the entire amount of such receipts, and the state treasurer shall place the money so received in a special fund, to be known as the "state board of chiropractic examiners' fund," which fund is hereby created. Such fund shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this act, upon proper claims approved by said board or a finance committee thereof.

Sec. 15. Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D. C." or any word or title to induce, or tending to induce belief that he is engaged in the practice of chiropractic, without first complying with the provisions of this act; or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor," or "D. C." immediately following his name, or the use of the letters "M. D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the word "osteopath," or the letters "D. O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both.

Sec. 16. Nothing in this act shall be construed to prohibit service in case of emergency, or the domestic administration of chiropractic, nor shall this act apply to any chiropractor from any other state or territory who is actually consulting with a licensed chiropractor in this state; provided, that such consulting chiropractor shall not open an office or appoint a place to

receive patients within the limits of the state; nor shall this act be construed so as to discriminate against any particular school of chiropractic, or any other treatment; nor to regulate, prohibit or apply to any kind of treatment by prayer; nor to interfere in any way with the practice of religion. Nor shall this act apply to persons who are licensed under other acts.

Sec. 17. It shall be the duty of the several district attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this act. It shall be the duty of the secretary of the board, under the direction of the board, to aid attorneys in the enforcement of this act.

Sec. 18. Nothing herein shall be construed as repealing the "medical practice act" of June 2, 1913, or any subsequent amendments thereof, except in so far as that act or said amendments may conflict with the provisions of this act as applied to persons licensed under this act, to which extent any and all acts or parts of acts in conflict herewith are hereby repealed.

Sec. 19. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The electors hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

EXISTING PROVISIONS.

Sections seven, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-two and twenty-four of the state medical practice act, approved June 2, 1913, as amended, which is proposed to be modified in so far as the act relates to issuance of certificates to chiropractors and regulation of the practice of chiropractic, read as follows:

(Provisions differing from proposed chiropractic act are printed in italics.)

Sec. 7. Every applicant for a certificate shall pay to the secretary of the board a fee of twenty-five dollars (\$25), which shall be paid to the treasurer of the board by said secretary. In case the applicant's credentials are insufficient or in case he does not desire to take the examination; the sum of ten dollars (\$10) shall be retained, the remainder of the fee being returnable on application.

Sec. 9. Every applicant must file with the board, at least two weeks prior to the regular meeting thereof, satisfactory testimonials of good moral character, and a diploma or diplomas issued by some legally chartered school or schools approved by the board, the requirements of which school or schools shall have been at the time of granting such diploma or diplomas in no degree less than those required under this act, or satisfactory evidence of having possessed such diploma or diplomas, and must file an affidavit stating that he is the person named in said diploma or diplomas, and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation; * * * provided, further, that an applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each such course to have been of not less than thirty-two weeks duration, but not necessarily pursued continuously or consecutively.

The said application shall be made upon a blank furnished by said board and it shall contain such information concerning the medical instruction and the preliminary education of the applicant as the board may by rule prescribe. In addition to the requirements heretofore provided for, applicants for any form of certificate hereunder shall present to said board at the time of making such application a diploma from a California high school or other school in the State of California requiring and giving a full four years' course of same grade, or other schools elsewhere, requiring and giving a full four years' standard high school course, or its equivalent, approved by the board, together

with satisfactory proof that he is the lawful holder of such diploma, and that the same was procured in the regular course of instruction. The passing of an examination before the entrance examining board for the entrance to the academic department of the University of California, or Stanford University or the University of Southern California, or the possession of documentary evidence of admission to the academic department of such institutions as a regular student or in full standing shall be sufficient basis or preliminary educational qualifications. In lieu of such diploma, the applicant may present: (1) a certificate from the college entrance examination board, or the college examining board of any state or territory showing that such applicant has successfully passed the examination of said board; or (2) if such applicant be thirty years or more of age he may show to the satisfaction of the board of medical examiners proof of preliminary education equivalent in training power to the foregoing requirements.

Sec. 10. Applicants for any form of certificate shall file satisfactory evidence of having pursued in any legally chartered school or schools, approved by the board, a course of instruction covering and including the following minimum requirements:

For a "Drugless Practitioner Certificate."	
Group 1. 600 hours.	
Anatomy -----	485 hours
Histology -----	115 hours
Group 2. 270 hours.	
Elementary chemistry and toxicology -----	70 hours
Physiology -----	200 hours
Group 3. 235 hours.	
Elementary bacteriology -----	40 hours
Hygiene -----	45 hours
Pathology -----	150 hours
Group 4. 370 hours.	
Diagnosis -----	370 hours
Group 5. 260 hours.	
Manipulative and mechanical therapy -----	260 hours
Group 6. 265 hours.	
Gynecology -----	100 hours
Obstetrics -----	165 hours
Total -----	2,000 hours

In the course of study herein outlined the hours required shall be actual work in the classroom, laboratory, clinic or hospital, and at least eighty (80) per cent of actual attendance shall be required; provided, that the hours herein required in any subject need not exceed seventy-five (75) per cent of the number specified, but that the total number of hours in all the subjects of each group shall not be less than the total number specified for such group.

Sec. 11. In addition to above requirements,

All applicants for "drugless practitioner certificates" must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. General diagnosis.
4. Pathology and elementary bacteriology.
5. Obstetrics and gynecology.
6. Toxicology and elementary chemistry.
7. Hygiene and sanitation.

All examinations shall be practical in character and designed to ascertain the applicant's fitness to practice his profession, and shall be conducted in the English language, and at least a portion of the examination in each of the subjects shall be in writing. The board in its discretion upon the submission of satisfactory proof from the applicant that he is unable to meet the requirements of the examination in the English language, may allow the use of an interpreter either to be present in the examination room or to thereafter interpret and transcribe the answers of the applicant. The selection of such interpreter is to be left entirely to the board and the expenses thereof to be borne by

the applicant, the payment therefor to be made before such examination is held. There shall be at least ten questions on each subject, the answers to which shall be marked on a scale of zero to one hundred. Each applicant must obtain no less than a general average of seventy-five per cent, and not less than sixty per cent in any two subjects; provided, that any applicant shall be granted a credit of one per cent upon the general average for each year of actual practice since graduation; provided, further, that any applicant for "drugless practitioner certificate" obtaining seventy-five per cent each in five subjects * * * shall be subsequently re-examined in those subjects only in which he failed, and without additional fee. Any person who at any time prior to January 1, 1916, shall pay to the secretary of said board the fee of twenty-five dollars and submit satisfactory proof of good moral character and of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and satisfactory proof of three years of actual practice of a drugless system of the healing art, such three years of actual practice to have been in the State of California, shall be admitted to the drugless practitioner examination; * * * Any one who shall pay the fee of fifty dollars to the secretary of the board prior to January 1, 1916, and submit to the board satisfactory proof of good moral character and proof of six years' actual practice of a drugless system of the healing art, three years of which must have been in the State of California, and satisfactory proof of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and upon proof of competency in a drugless system may be granted a certificate to practice a drugless system in this state; * * *

The examination papers shall form a part of the records of the board, and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. The secretary of the board shall in no instance participate as an examiner in any examination held by the board. All questions on any subject in which examination is required under this act shall be provided by the board of medical examiners upon the morning of the day upon which examination is given in such subject, and when it shall be shown that the secretary or any member of the board has in any manner given information in advance of or during examination to any applicant it shall be the duty of the governor to remove such person from the board of medical examiners, or from the office of secretary.

All certificates issued hereunder must state the extent and character of practice which is permitted thereunder and shall be in such form as shall be prescribed by the board.

Sec. 13. Said board must also issue a certificate to practice a system or mode of treating the sick or afflicted recognized by this act or any preceding practice act in the State of California, to any applicant, without any examination, authorizing the holder thereof to practice a system or mode of treating the sick or afflicted in the State of California, upon payment of a registration fee of one hundred dollars, upon the following terms and conditions and upon satisfactory proof thereof, viz: The applicant shall produce a certificate entitling him to practice a system or mode of treating the sick or afflicted, as provided in this act or any preceding practice act of the State of California, issued either by the medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practicing a system or mode for treating the sick or afflicted either in the District of Columbia or in any state or territory of the United States, or if such certificate shall have been lost, then a copy thereof, with proof satisfactory to the board of medical examiners of the State of California that the copy is a correct copy. Said certificate must not have been issued to such applicant

prior to the first day of August, 1901, and the requirements from the college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice a system or mode of treating the sick or afflicted shall not have been at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a similar certificate to practice a system or mode of treating the sick or afflicted in the State of California at the date of the issuance of such certificate, or which may hereafter be required by law and which may be in force at the date of the issuance of any such certificate; and provided, further, that said applicant shall furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the State of California showing what the requirements were of the college and of the board, issuing such certificate at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the State of California and any other or further examination or investigation which said board may see fit to make on its own part, it shall be found that the requirements of the board issuing such certificate were, when said certificate was issued, in any degree or particular less than the requirements provided by the law of the State of California at the date of the issuance of such certificate or that the applicant has not been a resident of the state from which the application is based for a period of one year subsequent to the issuance of such certificate he will not be entitled to practice within the State of California without an examination. An oral examination shall not be deemed to be of equal merit with a written examination and no certificate shall be issued in the case where a written examination was given in California and an applicant was given an oral examination in another state at the same time. The board is hereby authorized to enter into a contract or contracts of reciprocity with other states wherein the standard of such states is not in any degree or particular less than were the requirements in the State of California in the same year, for the issuance of a certificate to practice a system or mode of treating the sick or afflicted, such certificates to be similar in scope of practice as the certificate issued in the other state; provided, however, that an application based upon a certificate to practice any system or mode of treating the sick or afflicted issued in the District of Columbia or in any state or territory prior to March 4, 1901, if refused or denied by reason of the insufficiency of the standard of such state or territory then such applicant may have the privilege of either a written or oral examination before the board at the option of the applicant.

Sec. 14. Said board must refuse a certificate to any applicant guilty of unprofessional conduct. On the filing with the secretary of a sworn complaint, charging the applicant with having been guilty of unprofessional conduct, the secretary must forthwith issue a citation, under the seal of the board, and make the same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant when and where the charges of said unprofessional conduct will be heard and that the applicant shall file his written answer, under oath, within twenty days next after the service on him of said citation or that default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing may be compelled by subpoenas issued by the secretary of the board under its seal. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citation and subpoenas generally, and all the provisions of the statutes of this state then in force relating to subpoenas and to citations are hereby made applicable to the subpoenas and citations provided for herein. Upon

the secretary's certifying to the fact of refusal of any person to obey a subpoena or citation to the superior court of the county in which the service was had, said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempt for disobedience of process of the court, and should said court find that the subpoena or citation has been legally served, and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct, arising under this act, depositions of witnesses may be taken, the same as in civil cases and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made applicable to the taking of depositions under this act. If the applicant shall fail to file with the secretary of said board his answer, under oath, within twenty days after service on him of said citation, or within such further time as the board may allow, and the charges on their face shall be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such proper evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. Whenever any holder of a certificate herein provided for is guilty of unprofessional conduct, as the same is defined in this act, and the said unprofessional conduct has been brought to the attention of the board granting said certificate, in the manner hereinafter provided or whenever a certificate has been procured by fraud or misrepresentation or issued by mistake or that the certificate upon which a reciprocity certificate has been issued was procured by fraud or misrepresentation or issued by mistake or the person holding such certificate is found to be practicing contrary to the provisions thereof and of this act, it shall be the duty of the board and the board shall have power to suspend the right of the holder of said certificate to practice for a period not exceeding one year or to place the holder of said certificate upon probation or suspend judgment in such cases or revoke his certificate, or take such other action in relation to the punishment of the holder of said certificate as in its discretion it may deem proper. In the event of such suspension, the holder of such certificate shall not be entitled to practice thereunder during the term of suspension; but, upon the expiration of the term of said suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it shall be established to the satisfaction of the board that said person so suspended from practice, has, during the term of such suspension, practiced in the State of California, in which event the board shall revoke the certificate of such person. No such suspension or revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of suspension or revocation shall enter on his register the fact of such suspension or revocation, as the case may be, and shall certify the fact of such suspension or revocation under the seal of the board, to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "The holder of this certificate was on the ---- day of ---- suspended for ----," or, "This certificate was revoked on the ---- day of ----," as the case may be, giving the day, month and year of such revocation or length of suspension, as the case may be, in accordance with said certification to him by said secretary. The record of such suspension or revocation so made by said county clerk shall be prima facie evidence

of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said suspension or revocation; provided, further, that the holder of any certificate which has been revoked or suspended by the board of medical examiners, may within twenty days after receiving notice of said revocation or suspension of his said license, appeal to the superior court of the State of California in the county or city and county in which such suspension or revocation was made by the board of medical examiners. Upon such appeal being taken by such person whose license has been revoked or suspended by the board of medical examiners in accordance with the provisions of this act, the said superior court shall have full power to review all of the proceedings and testimony taken in said hearing before the board of medical examiners, and to inquire into the sufficiency of the evidence upon which such suspension or revocation was made. If the court finds the evidence sufficient to sustain the judgment of the board, said judgment shall be upheld and affirmed, and if the court deems such evidence insufficient to justify the judgment of the board of medical examiners in revoking or suspending the license of the petitioner, said superior court shall have full power to annul or reverse said judgment. The words "unprofessional conduct" as used in this act, are hereby declared to mean:

First—The procuring or aiding or abetting or attempting or agreeing or offering to procure a criminal abortion.

Second—The wilful betraying of a professional secret.

Third—All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety.

Fourth—All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed.

Fifth—Conviction of any offense involving moral turpitude in which case the record of such conviction shall be conclusive evidence.

Sixth—Habitual intemperance or excessive use of cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, novocaine or chloral hydrate or any of the salts, derivatives or compounds of the foregoing substances or the prescribing, selling, furnishing, giving away or offering to prescribe, sell, furnish, or give away such substances to a habitue who is not under the direct personal and continuous treatment and care of the physician for the cure of the above mentioned drugs.

Seventh—The personation of another licensed practitioner or permitting or allowing another person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

Seventh (a)—Employing directly or indirectly any suspended or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted or the aiding or abetting any unlicensed person to practice any system or mode of treating the sick or afflicted.

Eighth—The use, by the holder of any certificate, in any sign or advertisement in connection with his said practice or in any advertisement or announcement of his practice, of any fictitious name, or any name other than his own.

Ninth—The use, by the holder of a "drugless practitioner certificate" of drugs or what are known as medicinal preparations in or upon any human being, or the severing or penetrating by the holder of said "drugless practitioner certificate" of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord.

Tenth—Advertising, announcing or stating, directly, indirectly, or in substance, by any sign, card, newspaper, advertisement or other written or printed sign or advertisement, that the holder of such certificate or any other person, company, or association by which he is employed or in whose service he is, will cure or attempt to cure, or will treat, any venereal disease, or will cure or attempt to cure or treat any person or

persons for any sexual disease, for leprosy, manhood, sexual weakness, or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of, any person, firm, association, or corporation so advertising, announcing or stating.

Eleventh—The use by the holder of any certificate of any letter, letters, word, words, or term or terms used either as prefix or affix or suffix indicating that such certificate holder is entitled to practice a system or mode of treating the sick or afflicted for which he was not licensed in the State of California.

Twelfth—The employment of "cappers" or "steerers" or other persons in procuring practice for a practitioner for a system or mode of treating the sick or afflicted provided for in this act.

Sec. 15. Every person holding a certificate under the laws of this state authorizing him to practice any system or mode of treating the sick or afflicted in this state must have it recorded in the office of the county clerk of the county or counties in which the holder of said certificate is practicing his profession, and the fact of such recordation shall be endorsed on the certificate by the county clerk recording the same. Any person holding a certificate as aforesaid, who shall practice or attempt to practice any system or mode of treating the sick or afflicted in this state, without having first filed his certificate with the county clerk, as herein provided, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter designated in this act.

Sec. 16. The county clerk shall keep in a book provided for the purpose a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours.

Sec. 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor," the letters or prefix "Dr.," the letters "M. D.," or any other term or letters indicating or implying that he is a doctor, physician, surgeon or practitioner, under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law without having at the time of so doing a valid unrevoked certificate as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as designated in this act.

Sec. 18. Any person, or any member of any firm, or official of any company, association, organization or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as designated in this act, who, individually or in his official capacity, shall himself sell or barter, or offer to sell or barter, any certificate authorized to be granted hereunder, or any diploma, affidavit, transcript, certificate or any other evidence required in this act for use in connection with the granting of certificates or diplomas, or who shall purchase or procure the same either directly or indirectly with intent that the same shall be fraudulently used, or who shall with fraudulent intent alter any diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a diploma or certificate required hereunder or who shall use or attempt to use fraudulently any certificate, transcript, affidavit, or diploma, whether the same be genuine or false, or who shall practice or attempt to practice any system or treatment of the sick or afflicted, under a false or assumed name, or any name other than that prescribed by the board of medical examiners of the State of California on its certificate issued to such person authorizing him to administer such treatment, or who shall assume any degree or title not conferred upon him in the manner and by the authority recognized in this act, with intent to represent falsely that he has received such degree or title, or who shall wilfully make any false statement on any application for examination, license or regis-

tration under this act, or who shall engage in the treatment of the sick or afflicted without causing to be displayed in a conspicuous manner and in a conspicuous place in his office the name of each and every person who is associated with or employed by him in the practice of medicine and surgery or other treatment of the sick or afflicted, or who shall, within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all such persons associated with or employed by him or by any company or association with which he is or has been connected at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person or persons, or said employee or employees, is or are, or has or have been practicing medicine or surgery, or any other system of treatment of the sick or afflicted. It shall be the duty of any person or persons upon whom the board of medical examiners may make a demand for the name or names and address or addresses of a person or persons associated or employed by him or them to make affidavit that there are no such person or persons associated or employed by him or them, if such be the fact; provided, that such affidavit shall not be used as evidence against said person or employee in any proceedings under this action.

Sec. 19. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in or entitled to, such certificate, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery.

Sec. 22. Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies; nor shall this act apply to any commissioned medical officer in the United States army, navy or marine hospital, or public health service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry. Nor shall this act apply to any practitioner from another state or territory, when in actual consultation with a licensed practitioner of this state, if such practitioner is, at the time of such consultation, a licensed practitioner in the state or territory in which he resides; provided, that such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of this state. Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, not to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion. Nothing in this act shall be construed to prevent a student regularly matriculated in any legally chartered school or schools approved by the board from treating without compensation to such student the sick or afflicted as a part of his course of study.

Sec. 24. This act when referred to, cited or amended may be designated as the state medical practice act, and for a violation of any provision of this act, the said violator shall be guilty of a misdemeanor, unless otherwise specifically provided in this act, and shall be punished by a fine of not less than one hundred dollars nor more than six hundred dollars or by imprisonment for a term of not less than sixty days nor more than one hundred eighty days or by both such fine and imprisonment. The fines or forfeitures of bail in any case wherein any person is charged with a violation of the provisions of this act shall be paid upon the collection by the proper officer of the court seventy-five per cent thereof to the state treasurer to be deposited to the credit of the contingent fund of the board of medical examiners and such payment to said treasurer shall be made without placing such fine or forfeiture of bail in any special or contingent or general fund of any county, city and county, city, or township. The balance or twenty-five per cent of such fines or forfeitures of bail shall be paid to the county wherein the case is pending.

ARGUMENT IN FAVOR OF PROPOSED CHIROPRACTIC ACT.

Your vote "Yes" on the Chiropractic Initiative Bill is urged for many reasons, some of which are set forth herein, and all of which are consistent with American ideals, just to all and do injury to none.

Under this bill there will be a board of five competent chiropractors, appointed by the Governor, to examine and license chiropractors. No chiropractor will be licensed without examination. The board will be self-sustaining, incurring no additional expense to the taxpayers. It provides for high and proper standards of chiropractic education, a high school diploma or its equivalent, requires four hundred hours more than drugless section of present Medical Act, conforms to all general health laws administered by the board of health and prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors, thus guaranteeing to the people competency of chiropractors and protection from the ignorant or unscrupulous, which the medical law, administered by medical men, does not and can not do.

The teachings and practice of chiropractic are admittedly different from those of medicine, therefore, the members of the Medical Board, who are without training in the science of chiropractic, have never studied it, do not practice it, brand it as unscientific and absurd, are its competitors, and desire only to destroy it, can not intelligently and without prejudice examine the chiropractor in his system of practice.

To illustrate: It would be as reasonable to permit the Mikado to direct our shipbuilding and examine U. S. Naval officers as to permit the Medical Board, dominated by M.D.'s, to examine and control their chief competitors.

The progress of chiropractic, little short of marvelous, has been made under extremely unfavorable conditions. Denied ordinary freedom from oppression by political medicine, having no hospital facilities, no endowments of their schools or other institutions, no support of society except the commercial side resulting from the good they have done, they have reached the point where within the last seven years twenty-two states have enacted laws similar to the one now proposed in California.

The Medical Board, empowered, as it now is, to exercise unlimited authority over the practice of chiropractic, is using the medical law to throttle chiropractic and prohibit its practice in California.

The medical law, as administered by the Medical Board, has no reasonable tendency to promote the public safety and welfare.

The people of California demand that anyone who proposes to serve them in matters of health shall possess proper qualifications; therefore the demand for a board of chiropractic examiners to examine chiropractors and intelligently consider their qualifications. In this way only may the will and best interests of the people of California be served.

The following facts should be remembered:

The only opposition to this bill is by political doctors.

No chiropractic examinations were ever held in California.

No chiropractic licenses were ever issued in California.

No chiropractic licenses CAN be issued under present law.

In view of the foregoing, and in the interests of right and justice, vote "Yes."

G. A. LYNCH.

ARGUMENT AGAINST PROPOSED NEW CHIROPRACTIC BOARD.

To create two new boards, not only to duplicate but to triplicate the work now being done effectively and economically by one responsible board of examiners, is the extravagant purpose of Number 16, the Chiropractic Initiative, and Number 20, the Osteopathic Initiative. Both measures should be defeated as unnecessary and unsafe legislation.

California already has a competent Board of Examiners created by law, charged with the duty of determining, by impartial examination, the qualifications of all applicants, including chiropractors, who desire to treat diseases, injuries, deformities, physical or mental afflictions of human beings. Examinations are necessary to safeguard the lives and health of the people from incompetents, impostors and quacks. Citizens have the right to expect that anyone the state licenses shall possess a certain amount of knowledge of the causes and courses of diseases and the complex functions of the intricate human machine.

Examinations are open to all qualified applicants. Many chiropractors have taken and passed the examination and are now legally licensed and practicing in California. Any applicant who can meet the reasonable requirements of the present state law and pass a 75% examination can receive a license.

To create a new board for the special benefit of those who are unable or unwilling to take the state examination is to approve ignorance and license lawlessness.

Chiropractors and osteopaths constitute only two of the twenty-seven drugless cults of California. If a new board is created for chiropractors and another new board for osteopaths, it is obvious that the other twenty-five drugless cults are equally entitled to special boards. This would result in a chaotic condition constantly menacing the public health.

The California legislature at five different sessions carefully investigated and considered chiropractic demands for a new board based upon charges that the present board of medical examiners is incompetent and unfair. Each time the chiropractic charges were found untrue and the chiropractic bill was consequently rejected five times as without merit.

Some of the many dangerous features of the chiropractic act are: It lowers educational standards; it removes vital public health safeguards; under its provisions thousands of graduates of "fly by night" schools may be licensed with practically no examination at all; it neglects to define "chiropractic." To create a new board and grant powers to it, to license those of inferior education to practice an undefined and uncertain thing is unsafe.

The law governing the Board of Medical Examiners has been upheld by our courts as valid, reasonable and enforceable without one dissenting opinion. Governor Johnson and Governor Stephens selected an able board. If the present board becomes incompetent or unfair the governor has authority to select a new board. The courts can review and reverse the Board's decisions. Such a well-selected, responsible board assures all applicants of impartial and competent consideration and assures the people of California adequate protection.

To maintain educational standards and public health safeguards, vote "No" on Number 16.

HOMER R. SPENCE,

Assemblyman Thirty-fifth Assembly District.

USE OF STREAMS. Assembly Constitutional Amendment 41 adding Section 19a to Article XI of Constitution. Authorizes the state, or any political subdivision empowered to establish public works for such purpose, to provide itself or its inhabitants, in the manner therein provided, with water, electricity, or protection against flood by utilizing or controlling the waters of any stream outside this state or partly within this state, and to incur bonded indebtedness therefor as provided by law; these powers not limited by Section 31 of Article IV or Section 13 of Article XI of Constitution.

YES

NO

Assembly Constitutional Amendment No. 41—A resolution to propose to the people of the State of California an amendment to the constitution by adding a new section to article eleven thereof to be designated section nineteen a, authorizing the state, or municipal corporations or political subdivisions thereof, to provide water, electric energy, or protection from flood, by utilizing, or controlling, the waters of any stream situate outside this state, or partly within and partly without this state.

Resolved by the assembly, the senate concurring, That the legislature of the State of California, at its forty-fourth regular session, beginning on the third day of January, one thousand nine hundred twenty-one, two-thirds of all the members elected to each of the houses voting in favor thereof, proposes to the people of the state that a new section be added to article eleven of the constitution, to be numbered section nineteen a, and to read as follows:

[Note. The resolution as filed with the secretary of state shows the new section to be numbered 19a in the preamble and 20 at the beginning of the amendment as shown here.]

PROPOSED AMENDMENT.

Sec. 20. The State of California, or any district, municipal corporation or political subdivision of said state, authorized by law to establish public works for the purpose of supplying itself, or its inhabitants, with water, electric energy or means of protection from flood, may, for any such purpose, provide for utilizing or controlling the waters of any stream situated outside of this state, or partly within and partly without this state, and, to that end, may do and perform

each, any or all of the following acts and things, to wit:

(a) Acquire, establish, construct, own, maintain and operate, either alone or in common with any other political organization or organizations, any works, plants or structures, whether within this state or outside thereof, or partly within and partly without this state, necessary or convenient for any such purpose;

(b) Make and enter into contracts with any political organization, or organizations, with reference to the acquisition, establishment, construction, ownership, maintenance or operation of such works, plants or structures, including contracts for participating in the cost and benefits of the acquisition, establishment, construction, maintenance or operation of such works, plants or structures, provided, or to be provided, by any other political organization, or organizations, and contracts for the participation by any other political organization, or organizations, in the cost and benefits of such works, plants, or structures, provided, or to be provided, by the State of California, or any district, municipal corporation, or corporations, or political subdivision, or subdivisions, of said state, and contracts with any person, or persons, firm, or firms, corporation, or corporations, for participation by them, or any of them, in the cost and, subject to the limitations hereinafter expressed, in the benefits, of any such works, plants, or structures, or for the furnishing to them, or any of them, of water or electric energy, but no person, firm or corporation, other than a political organization, shall ever own or operate, or hold any interest in, any such works, plants or structures;

(c) Become a member, associate or shareholder in any organization, association or corporation now or hereafter provided for under the laws of the United States, or of any state or states, and which shall be formed solely for the

Board of Chiropractic Examiners

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CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
<http://www.chiro.ca.gov>

**NOTICE OF PUBLIC MEETING****Scope of Practice Committee****September 4, 2008****1:00 p.m.****2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833****AGENDA****CALL TO ORDER****Approval of Minutes**

- July 17, 2008

Public Comment**Discussion and Possible Action**

- Chiropractic Use of X-Ray on Non-Chiropractic Patients

Discussion and Possible Action

- Update on Standard of Care Regulations for Manipulation Under Anesthesia

Public Comment**Future Agenda Items****ADJOURNMENT****SCOPE OF PRACTICE COMMITTEE**

Hugh Lubkin, D.C., Chair

Frederick Lerner, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

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**NOTICE OF PUBLIC MEETING****Scope of Practice Committee****September 4, 2008****1:00 p.m.****2525 Natomas Park Drive, Suite 100
Sacramento, CA 95833****AGENDA****CALL TO ORDER****Approval of Minutes**

- July 17, 2008

Public Comment**Discussion and Possible Action**

- Chiropractic Use of X-Ray on Non-Chiropractic Patients

Discussion and Possible Action

- Update on Standard of Care Regulations for Manipulation Under Anesthesia

Public Comment**Future Agenda Items****ADJOURNMENT****SCOPE OF PRACTICE COMMITTEE****Hugh Lubkin, D.C., Chair****Frederick Lerner, D.C.**

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BOARD OF CHIROPRACTIC EXAMINERS MEETING MINUTES

Scope of Practice Committee

July 17, 2008

State Capitol

Assembly Room 126

Sacramento, CA 95814

Committee Members Present

Hugh Lubkin, D.C., Chair

Frederick Lerner, D.C.

Staff Present

Brian Stiger, Executive Officer

LaVonne Powell, Senior Staff Counsel

Marlene Valencia, Staff Services Analyst

Valerie James, Office Technician

Call to Order

Dr. Lubkin called the meeting to order at 10:05am.

Roll Call

Dr. Lerner called the roll. All committee members were present.

Approval of Minutes

May 7, 2008 minutes

**DR. LERNER MOVED TO APPROVE THE MINUTES. DR LUBKIN SECONDED THE MOTION;
VOTE 2-0, MOTION CARRIED**

Public Comment

Dr. Charles Davis, D.C. International Chiropractic Association of California (ICAC) recommended that the committee consider the suggestions from ICAC regarding the recognition of chiropractic specialties submitted to the committee at the last meeting.

Recognition of Chiropractic Specialties

Mr. Stiger informed the committee that staff is researching Chiropractic Specialties project and plans to have proposed language to present to the Board at the September Board meeting.

Dr. Lubkin stated that after he conducted initial research that this project is much larger than originally thought and that he appreciated the time involved with this project.

Dr. Lerner reiterated that the Board cannot license or certify chiropractic specialties. The Board can only recognize the specialties.

Dr. Lubkin offered that this issue pertains to Business & Professions codes 650 and 651.

Public Comment

Kristine Schultz, California Chiropractic Association (CCA), spoke in support of recognizing chiropractic specialties and suggested that the Board proceed with emergency regulations to expedite the process.

Dr. Welch expressed his concerns of that former Board staff attempted to limit the chiropractic scope of practice through the Board's enforcement practices.

Dr. Lubkin stated that he looks forward to the day when people appreciate that the current Board is not the past Board and the current Board staff is not the past Board staff. The Board is a public protection entity and that as long as advertising is truthful and honest the profession will not have a problem with this Board.

Dr. Lerner clarified that the Board is not pursuing recognizing chiropractic specialties to promote the profession. The Board is concerned about public protection regarding chiropractic specialties and making sure that the chiropractor is qualified to perform the specialty in which they are advertising, so that the public can make an informed choice.

Update on Scope of Radiography in the Chiropractic Practice

Dr. Lubkin explained the ongoing issues regarding chiropractic use of x-ray in relation to the practice act. Dr. Lubkin assured the public and the profession that the committee is working diligently to address the issues and bring this topic to its conclusion.

Dr. Charles Fleming, D.C. shared his experience in taking x-rays of non-chiropractic patients and believes that chiropractors may lawfully take x-rays of medical patients.

Dr. Lubkin explained that the Radiological Board determined that the use of the supervisor operator certificate is determined by the Chiropractic Board. Dr. Lubkin clarified the difference between a chiropractor acting as radiology technician and a chiropractor who takes an x-ray, formulates a diagnosis, and prepares a written report.

Dr. Schnell stated that the chiropractic regulations do not state that chiropractors cannot take x-rays of non-chiropractic patients and wanted to know what the Board's primary concerns were.

Dr. Lerner stated the committee has asked for a legal opinion on this issue, which is not completed. He reiterated the language in section 302 and stated the Radiology Committee determined that the chiropractors may take x-rays within the scope of practice. He stated that chiropractors can take x-rays of the entire body not just the muscles, bones, and joints. Dr. Lerner believes that the Radiology Committee may have been misinformed about the chiropractic scope of practice in the past.

Mr. Stiger informed Dr. Schell that the issue may not be resolved fully with the legal opinion. There may be additional work that the committee may need to complete before the issue is totally resolved.

Dr. Lerner asked if the committee can make the legal opinion public. Mr. Stiger informed the committee that it would be the committee's decision to make the opinion from legal public information.

Kristine Schultz spoke in support of chiropractors taking x-rays of non-chiropractic patients.

Dr. Davis spoke in support of chiropractors taking x-rays of non-chiropractic patients.

Issues raised in "Petition to Define Practice Rights and to Amend, Repeal and /or Adopt Scope of Practice Regulation as needed," Submitted by David Prescott, Attorney

Dr. Lubkin explained that David Prescott raised several interesting issues regarding the Scope of Practice that was placed on the ballot in 1922.

Dr. Davis expressed to the Board that he would like the board to publish the complete ballot that Dr. Prescott presented to the committee.

Dr. Lubkin expressed concern regarding the authenticity of the documents submitted by David Prescott.

DR. LERNER MOVED TO SEND THE DOCUMENT TO THE SECRETARY OF STATE TO VERIFY ITS AUTHENTICITY AND IF THEY FIND IT AUTHENTIC RECOMMEND TO THE FULL BOARD TO REPRINT THE ACT THE WAY IT WAS WRITTEN IN 1922.

DR. LUBKIN SECONDED THE MOTION:

VOTE: 2-0

MOTION CARRIED

Future Agenda Items

Dr. Lubkin would like to have the letter from DCA regarding Scope of Radiography and use of radiography in the practice of chiropractic.

Adjournment

Dr. Lubkin adjourned the meeting at 10:55 a.m.

STEPHEN E. GORMAN
OF COUNSEL

PETER J. KOZAK
TRIAL COUNSEL

GORMAN & KOZAK, LLP
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CAMERON PARK, CA 95682-7984

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(530) 677-6000 / FAX (530) 677-9893

DOUGLAS E. STEIN
SPECIAL COUNSEL

MATTHEW D. ENGBRETTSON
ASSOCIATE COUNSEL

June 27, 2006

VIA US MAIL AND FAX

Board of Chiropractic Examiners
2525 Natomas Park Dr., Ste. 260
Sacramento, CA 95833-2931
Fax: 916-263-5355

Re: Board meeting of July 20, 2006

Dear Gentelpersons:

I am writing on behalf of my client, Rodney Schell, D.C. Dr. Schell has been licensed as a chiropractor in the State of California for many years. He has also been licensed as a X-Ray Supervisor and Operator by the California Department of Health Services. Until recently he was employed by Community Mobile Diagnostics to supervise and operate x-ray machines. After receiving a "NOTICE OF VIOLATION" from Ephraim Maura of the Inspection, Compliance and Enforcement Section, Radiologic Health Branch, Richmond Regional Office of the Department of Health Services, Dr. Schell's employer terminated his services. Upon investigation we discovered that the "violation" that Mr. Maura complained of was simply that Dr. Schell was a chiropractor. I have attached copies of the notice of violation and Community Mobile Diagnostic's response for your review.

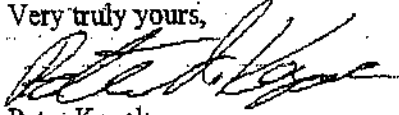
Under §302(a)(6) of Title 16 of the regulations of the California Board of Chiropractic Examiners, as a licensed chiropractor Dr. Schell is licensed to use x-ray equipment for diagnostic purposes. The scope of Dr. Schell's work with Community Mobile Diagnostics was entirely diagnostic; none of the procedures he did were "treatment". It would seem that Mr. Maura's contention is that as a chiropractor he did not meet the requirement established by California Health and Safety Code §107110, specifically that anyone operating an x-ray machine be certified by a recognized examining board in radiology. Dr. Schell's license was valid for diagnostic work, and he did not exceed the scope of that license.

I believe that a short Letter of Opinion from the Board to Mr. Maura and his Department supervisor would be invaluable in clarifying this issue. On Dr. Schell's behalf, I respectfully request that the Board place this matter on the agenda for the next Board of Chiropractic Examiners meeting scheduled to be held July 20, 2006. Dr. Schell plans to attend that meeting and he will be pleased to provide whatever information you may need to resolve this issue.

Board of Chiropractic Examiners
June 27, 2006
Page 2

I appreciate your assistance in this matter. Should you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Peter Kozak
Attorney at Law

PJK:ap

bcc: Rodney Schell, D.C.
(fax) 916-990-0131

Manipulation Under Anesthesia (MUA)
Proposed Regulations
Update

September 4, 2008

Status:

- March 27, 2008 – The Board approved the proposed regulatory language with minor amendments
- August 13, 2008 – Revised proposed regulatory language
- August 20, 2008 – Board staff met with staff with the Office of Administrative Law (OAL) to discuss the MUA proposed regulations
- September 24, 2008 – Revised proposed regulatory language to be presented to the full Board for adoption
- October 14, 2008 – Projected filing date with OAL
- October 24, 2008 – December 8, 2008 – Projected 45-day written comment period
- December 8, 2008 – Projected public hearing date in Sacramento

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**NOTICE OF PUBLIC MEETING****STRATEGIC PLANNING COMMITTEE****May 22, 2008**

Upon conclusion of the Legislative Committee
Hearing Room
1625 N. Market Blvd, Room S102
Sacramento, CA 95834

AGENDA**CALL TO ORDER****Discussion and Possible Action:**

- Strategic Plan 2008

PUBLIC COMMENT**NEW BUSINESS – Future Agenda Items****ADJOURNMENT****STRATEGIC PLANNING**

Richard H. Tyler, D.C. Chair
Francesco Columbu, D.C.

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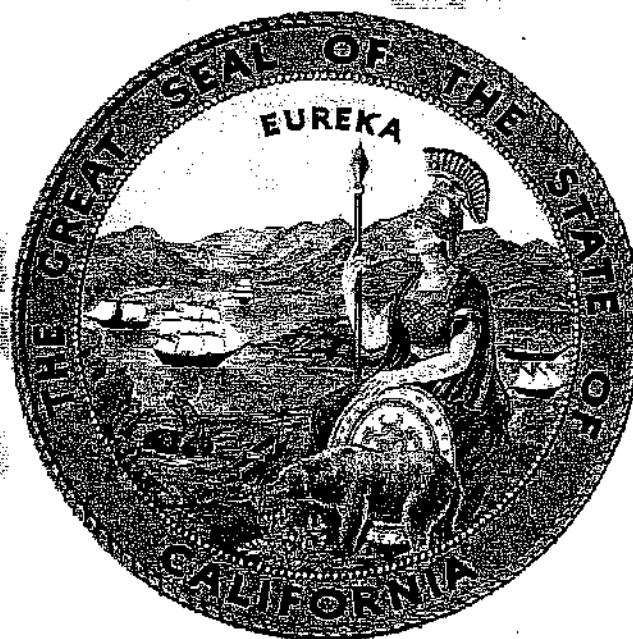
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State of California
Board of Chiropractic Examiners

Draft
Strategic Plan

May 2008



Arnold Schwarzenegger, Governor
State of California

Members of the Board

Dr. Frederick Lerner, D.C., Chair

Dr. Hugh Lubkin, D.C., Vice Chair

Dr. Francesco Columbu, D.C., Secretary

Dr. Richard H. Tyler, D.C. Professional Member

Judge James Duvaras, Ret., Public Member

Mr. Jim Conran, Public Member

Executive Officer

Brian J. Stiger

Board of Chiropractic Examiners Strategic Plan

May 2008

Our Mission:

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Our Vision:

(Under Development)

Our Values:

We value:

- Working together as a team to protect consumers.
- Professionalism in serving the profession.
- Feedback, suggestions, and innovative ideas to improve daily operations.
- Providing excellent customer service to consumers, applicants, licensees, and staff.
- Productive partnerships with consumers, licensees, and professional associations.

Goals and Objectives

Goal One:

Establish a Board culture that fosters and promotes consumer protection, effective board governance, and accountability.

- 1.1 Establish and maintain a Board Member Administrative Manual to assist Board Members carry out their responsibility to develop policy, adjudicate disciplinary matters, and protect the public's interest.
 - 1.2 Restructure the organization to establish clear lines of responsibility, authority and accountability.
 - 1.3 Develop and update operating procedures to reflect best regulatory practices.
 - 1.4 Analyze all core business processes and identify opportunities to decrease processing times, decrease costs or improve quality.
 - 1.5 Develop and implement an Internal Control system for management accountability.
 - 1.6 Develop a management information system to track priorities and identify areas of concern and establish accountability.
-

Goal Two:

Improve enforcement operations to protect consumers and create a fair and equitable marketplace for chiropractic doctors.

- 2.1 Establish in-house investigator positions to investigate consumer complaints, monitor probationers, and conduct random and directed inspections of chiropractic clinics.
- 2.2 Revamp the expert consultant / witness program to improve overall effectiveness and minimize conflicts of interest.
- 2.3 Redesign the complaint handling system to reduce handoff points, maintain continuity throughout the process, and decrease processing times.
- 2.4 Analyze complaint trends, inspection reports, and enforcement tips to focus enforcement resources appropriately.
- 2.5 Develop a process to address unlicensed practice allegations on a continuous basis and devote the resources necessary to minimize this population.

- 2.6 Improve case management process to quickly identify and address aged complaints and investigations and other enforcement actions to ensure management oversight.
- 2.7 Develop baseline and performance measures for primary functions of the enforcement process.
- 2.8 Adopt regulations to institute a citation and fine program and "Letter of Admonishment" to address alleged less serious violations of the Initiative Act and chiropractic regulations.

Goal Three:

Strengthen licensing procedures to ensure only competent applicants gain entry to the profession and seek ways to facilitate the license renewal process.

- 3.1 Review and update licensing procedures to include time lines and confirmation that all requirements are satisfied prior to releasing an initial license
- 3.2 Establish a process to review chiropractic colleges and schools to ensure the level of instruction is consistent with all relevant laws and regulations.
- 3.3 Work with the Department of Consumer Affairs to provide the option to license renewal through the internet.

Goal Four:

Improve and enhance continuing education requirements for licensees.

- 4.1 Increase the required number of annual continuing education hours to ensure doctors of chiropractic maintain professional competency.
- 4.2 Provide options for the profession to take continuing education courses through distance learning and other relevant health care professional courses.
- 4.3 Develop a continuing education course auditing system to ensure providers are delivering quality instruction to licensees and take action against those providers who fail to meet the quality standards.
- 4.4 Simplify the continuing education application process to ensure applicants have a clear understanding of the requirements and to reduce processing times.

Goal Five:

Develop outreach strategies to educate consumers and licensees to improve consumer protection.

- 5.1 Develop consumer education materials in different languages to assist consumers make informed decisions.
 - 5.2 Develop a quarterly newsletter in an electronic format to provide information to consumers, licensees, and other stake holders.
 - 5.3 Partner with state and local governments to participate in consumer related events to provide information about the Board's mission and consumer protection services.
 - 5.4 Enhance the Board's website to provide useful information to consumers and licensees and serve as viable means of communication.
-